

**EXHIBIT 38**

**FILED UNDER SEAL**

## **EXHIBIT 39**

## Expert Report of Ben Edelman

### Introduction and qualifications

1. I am an assistant professor at Harvard Business School. My research focuses on the design of electronic marketplaces including Internet advertising, search engines, privacy, and information security. I hold a Ph.D. in Economics from Harvard University, a J.D. from Harvard Law School, an A.M. in statistics from Harvard University, and an A.B. in economics from Harvard College. Further information concerning my background and qualifications is provided in my curriculum vitae, which is attached hereto as Exhibit A.
2. My experience includes more than 15 years as a computer programmer, in which time I developed software for my own use, end-user computers, local networks, and web servers; and administered servers for myself and others. My technical experience includes efforts to verify the security of other programmers' code including uncovering shortfalls in others' security systems. I have studied and written about questions of information security, accidental information revelation, and information distributed more broadly than online services anticipated. For example, I have personally uncovered multiple Google privacy flaws, including improper data collection by Google Toolbar as well as improper data distribution by Google JotSpot. I also found and demonstrated to a court's satisfaction that an early online video service, iCraveTV, had failed to secure video contents in the way that it had previously represented to that court.
3. My academic publications explore a variety of aspects of online business, including multiple articles considering the difficulty of limiting access to and use of information systems. A full list of my publications is provided in my curriculum vitae, which is attached hereto as Exhibit A. Among the publications relevant to questions at issue in this matter are the following articles: In "Shortcomings and Challenges in the Restriction of Internet Retransmissions of Over-the-air Television Content to Canadian Internet Users," a submission to Industry Canada, I evaluated the difficulty of imposing certain access restrictions when distributing video material over the Internet. In "Securing Online Advertising: Rustlers and Sheriffs in the New Wild West," I presented the challenges of designing online advertising markets to satisfy the requirements of advertisers, online publishers, and advertising platforms while unauthorized activities such as advertising fraud are taking place. In numerous articles, I have presented all manner of online miscreants using information systems in ways their providers did not intend, did not anticipate, sought to prevent, and/or claimed to seek to prevent.
4. My teaching assignment currently consists of a HBS elective course called *The Online Economy*, which analyzes strategies for all manner of online businesses. The course includes concerns arising out information security.
5. I have testified as an expert witness in federal courts, and I have testified to committees of the United States House of Representative and United States Senate. I have offered expert testimony in the U.S. District Courts for Michigan and Pennsylvania and in Utah State Court. A listing of the cases in which I have testified as an expert at trial or by deposition during the past four years is attached as Exhibit B.
6. I am being compensated for my work in this matter at the rate of \$450 per hour.

### **Scope of retention**

7. I understand Google is asserting a fair use defense to the allegations that, without permission from rights-holders, it digitized millions of in-copyright books from a number of university libraries, maintains digital copies of those books on its servers, distributed digital copies of those books to the libraries, and displays on the Internet verbatim content from the books. In this report, I address and opine on risks of a security breach exposing widely online the contents of in-copyright books from (a) the scanning, storage and display of books (or book excerpts) by smaller, less sophisticated entities that, under an adverse fair use ruling, would be permitted to engage in conduct similar to Google's Library Project, (b) Google's distribution of digital copies of scanned books to libraries, and (c) Google's retention and storage of multiple copies of the millions of books it digitizes in its Library Project.

8. I conclude that unrestricted and widespread conduct of the sort engaged in by Google would result in a substantially adverse impact on the potential market for books.

9. If the Google Library Project is found not to be a fair use, then the books could be digitally copied, distributed and displayed through licenses that include security protocols and a damages structure for breaches of those protocols. Conversely, if such uses are deemed permissible without requiring permission from rights-holders -- i.e., if fair use were to be found here -- then rights-holders will have little or no means to reduce the security risks identified in this report.

10. Exhibit C lists the documents I reviewed and sources I considered.

### **Piracy of books is already a real, not hypothetical problem**

11. The electronic distribution of electronic copies of books, without authorization from publishers or rights-holders, is already occurring. For example, consider a user seeking a copy of "American Sniper," the number one bestseller hardcover nonfiction book according to the New York Times bestseller list dated April 1, 2012. Such a user might run a Google search for "american sniper mobi" (without quotes), using the word "mobi" to indicate interest in a ".mobi" book (a popular electronic book file format). The first, second, third, fourth, fifth, sixth, eighth, ninth, and tenth-listed links all offer or purport to offer copies of the specified book. I checked these nine links; I found that all but one confirmed that the book was available and offered a download link or download instructions. Of the ten links, only one (the seventh) pointed to a site (Amazon) that charged for access to the book. Of course the book is a top-selling in-copyright commercial publication; anyone offering no-charge copies is almost certainly doing so without permission from the copyright holder.

12. Sites with pirated books fall into several categories. Some sites charge for pirated book copies, though they do not share the resulting revenues with those who created the books. Other sites distribute pirated book copies for free. Among sites offering free book copies, some offer direct web-based downloads, providing pirated book copies when a user simply clicks to request a copy. Other sites offer links to Bit torrent ".torrent" files that direct a user's computer to other computers from which a desired file may be copied.

### **Similar Scanning Operations Could Allow Book Copies to Be Copied and Redistributed**

13. If Google's conduct is found to be a fair use and others engage in similar conduct, a risk is created of book redistribution through piracy.

14. If other providers ("providers") scan books, the resulting digital book copies could enter widespread public circulation via any of several channels. First, pirates could extract book copies through defects in the security of a provider's systems. Once books are scanned, the resulting digital files are stored on a server or, more often, multiple servers. Defects in the access controls of any such server could allow pirates to gain access to digital book copies. Defects could arise through flaws in the operating system, database server, web server, or other software run on a provider's servers; such flaws have been widespread in even the most popular server software. Defects could also arise through the provider's custom software, which is likely to be less secure because custom software usually receives a lesser level of scrutiny, testing, and verification than software that is distributed and used more broadly.

15. Second, pirates could extract books via errors in the security configuration of a provider's systems. If even one of a provider's servers lacks a required update or other security feature, pirates could use that server to obtain the book copies.

16. Third, pirates could extract books by impersonating provider staff to access provider systems. Suppose an attacker can obtain the username and password of a person with full access to a provider's book copies. The attacker can log in with that password to access and copy the provider's book copies. Similar attacks are frequent: For example Amazon Zappos,<sup>1</sup> Gawker,<sup>2</sup> and Microsoft Hotmail<sup>3</sup> suffered similar attacks in 2009-2011. Even the United Nations suffered a breach of the same type.<sup>4</sup> If a single staff person at a single book provider used the same password for a hacked site and for access to book copies, then a hacker could use that password to access book copies, copy book copies to the hacker's own systems, and redistribute book copies further from there.

17. Fourth, a rogue employee could intentionally redistribute book copies. Rogue employees gain and exploit privileged access to data despite organizations' efforts to screen and supervise key staff. Consider the classified US State Department material distributed by Wikileaks in 2010 – information obtained via a rogue employee. A rogue employee with access to book copies could intentionally make those copies available to the public.

18. Fifth, when books are scanned by a smaller and less sophisticated provider, there is a particularly acute risk of book contents being accessed and redistributed. For one, less sophisticated organizations have a reduced capability to design, install, and maintain suitable web site, database, and related security systems as well as anti-reconstruction

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<sup>1</sup> Dominic Rushe. "Zappos Database Hit by Cyberattack." The Guardian. January 16, 2012.

<sup>2</sup> Zachary Seward and Albert Sun. "The Top 50 Gawker Media Passwords." Wall Street Journal - Digits. December 13, 2010.

<sup>3</sup> Bogdan Calin. "Statistics from 10,000 Leaked Hotmail Passwords." Acunetix. October 6, 2009. <http://www.acunetix.com/blog/news/statistics-from-10000-leaked-hotmail-passwords/>.

<sup>4</sup> Chloe Albanesius. "Team Poison Hacks UN, Leaks Usernames, Passwords." PC Magazine. November 30, 2011.

systems to secure books. Furthermore, less sophisticated organizations have a lesser ability to screen key staff to prevent data loss through rogue employees, and a lesser ability to configure security systems to exclude hackers. Thus, if other companies and organizations follow Google's lead in scanning books, a risk exists that book contents will be accessed and redistributed.

19. As set out in the section captioned "A Single Breach Could Cause Devastating Harm to the Class," one instance of book copying can have large effects. For example, if numerous companies and organizations scan books, attackers can focus their efforts on whichever installs the weakest security. Similarly, attackers can take advantage of even a brief period when a single book provider is insecure (for example, through failure to properly update a server). Once attackers obtain book copies, they can then redistribute the copies as desired. If many providers begin scanning and storing digital book copies, the affected books are only as secure as the least secure provider – so the diligent efforts of some providers would be undermined by lax security of others.

#### **Breaches in Libraries' Systems Could Facilitate Book Piracy**

20. I understand that the Google Library Project includes providing to its library partners a full digital copy of the books the libraries allowed Google to scan. Breaches in the security systems at these libraries could facilitate book piracy.

21. I have not been informed of all the ways that libraries intend to use the book contents data they receive from Google, nor have I been informed how libraries intend to secure that data. But the information currently available indicates that libraries' actions present a risk of book piracy.

22. If libraries provide book contents in a way where authorized library users can access the data, it is likely that some users will attempt to exceed the intended scope of authorization to access and copy book contents en masse. For example, in July 2011, a student used MIT library access to download 4.8 million articles and other documents.<sup>5</sup>

23. Structural factors also increase the difficulty of libraries properly securing book contents. University libraries typically serve myriad users including students, visitors, and others with limited long-term connection to the library – limiting a library's ability to establish accountability. Moreover, libraries typically specialize in making information available rather than in restricting how information may be used. While some libraries offer electronic resources that are subject to restrictions on use, these restrictions are typically implemented by keeping the information on the information provider's servers so that the information provider, not the library, can monitor usage and attempt to assure compliance. For example, when a library licenses journals and articles and other documents from the JSTOR digital archive, libraries do not receive full copies of the articles to store on library servers. Instead, libraries receive secure access to JSTOR servers, allowing library patrons to access individual documents on JSTOR without ever receiving the full corpus of all articles JSTOR holds. Access to documents held by Lexis-Nexis and Westlaw is similar. In contrast, the book contents here at issue would be stored on libraries' servers without an outside third party to assure and enforce compliance with access restrictions.

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<sup>5</sup> United States of America v. Aaron Swartz. Indictment. July 14, 2011.



24. The likely uses of digital book copies further exacerbate the risk of copying. A natural use of digital book copies is to analyze patterns in book text. From the perspective of a researcher seeking to perform such analysis, it is natural to begin by copying digital book copies onto a system the researcher controls, allowing the researcher to run flexible and high-speed searches of those book copies using the researcher's preferred tools. (In contrast, if the researcher had to run analyses on a server controlled by the library, the researcher would ordinarily be able to use only those tools the library provides, and the speed of the researcher's analysis might be constrained by server capacity and availability.) Crucially, once a researcher copies the data onto his own system, the library's prior security efforts (whatever they might be) are largely irrelevant. A researcher might even store digital book copies on a laptop or USB drive, where loss and theft are particularly frequent. When book copies are processed into text using optical character recognition, the resulting files can be quite small – making it feasible to store tens of thousands of book copies on an ordinary laptop or USB drive.

25. A further risk of book piracy from or via university libraries comes from the culture of “pranks” enjoyed by many software and engineering students. For example, the MIT Hack Gallery presents hundreds of hacks including public displays of the Apple logo, the logo of the Boston Red Sox, and the logos of various movies.<sup>6</sup>

26. In its agreement with the University of Michigan, Google has specifically avoided responsibility for monitoring how libraries store or use book contents. The University of Michigan agreement specifically speaks to Google's duty of care over physical books in Google's custody (including the risk of loss, damage, pests, fire, theft, and the like).<sup>7</sup> However, the agreement offers limited commitments as to the University of Michigan's duty to keep secure its Digital Copy of the book contents.<sup>8</sup> For example, Google's agreement with University of Michigan provides the use of robots.txt as a supposed “technological measure ... to restrict automated access” to the Digital Copy, but robots.txt offers no genuine security protection and instead relies on a requester's compliance with stated restrictions on access. The other provisions of Google's agreement with University of Michigan are vague (“reasonable efforts,” “cooperate in good faith to mutually develop methods,” etc.). These vague provisions offer significantly lower protection than Google provides for even its routine business confidences.<sup>9</sup>

### **Google Itself Is Not Immune to Design Flaws and Security Breaches**

27. Despite Google's considerable resources, Google products and services nonetheless suffer from design flaws and security breaches which result in information flowing in ways Google and/or users did not intend.

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<sup>6</sup> <http://hacks.mit.edu/>

<sup>7</sup> Cooperative Agreement between Google Inc. and Regents of the University of Michigan, sections 2.3.1 and 2.7.

<sup>8</sup> Cooperative Agreement between Google Inc. and Regents of the University of Michigan, sections 4.4.1-2.

<sup>9</sup> For example, the Google NDA presented at <http://valleywag.com/230407/this-nda-never-existed> offers greater protection including greater restrictions on the circumstances in which information can be shared, greater restrictions on the permissible recipients of such information, and more precise requirements as to how information must be secured.

28. In general, Google faces each of the vulnerabilities detailed in “Similar Scanning Operations Could Allow Book Copies to Be Copied and Redistributed” above. The following sections flag specific problems that could occur, as well as noting similar problems Google has already faced.

*Google’s Security Systems are not Failproof*

29. In other information and distribution services, Google has failed to comply with its commitments to users and the public. For example, in January 2010, I found and reported the popular Google Toolbar program – installed on “hundreds of millions” of computers<sup>10</sup> – continuing to track users’ browsing (including every web page visited) even after users had specifically requested that the Toolbar be “disable[d]” and even after the Toolbar had confirmed users’ request and disappeared from screen.<sup>11</sup> The user browsing at issue was users’ most sensitive online activities: reasonable users would activate the Toolbar’s “disable tracking” feature exactly when they sought to engage in private activities they did not wish Google to track. Google subsequently characterized its nonconsensual information collection as “an issue”<sup>12</sup> but offered no explanation for why it collected information users had specifically indicated, and Google had agreed, should not be collected. Google has paid no compensation to affected users. Neither did Google promise to undo the error: Google never offered to let affected users identify themselves so Google could delete their data from its records.

30. In spring 2010, Google introduced Buzz, a social network for connecting to online colleagues and sharing information about who is doing what. For users of Google’s email service, Gmail, Buzz shared with the general public the names of the persons Gmail users corresponded with – information Google had previously indicated it would keep confidential. Google subsequently faced class litigation for this information breach, alleging that affected users suffered direct economic loss as a result of Google’s information revelation. For example, Buzz revealed the persons sending email to and receiving email from Andrew McLaughlin, who had previously served as a Google lobbyist, and was working in the White House as deputy Chief Technology Officer of the United States. Buzz’s information revelation indicated that Mr. McLaughlin had engaged in impermissible activities with his prior employers, in violation of White House ethics rules. After Buzz-posted information prompted a complaint and an investigation, Mr. McLaughlin was formally reprimanded for the improper communications.<sup>13</sup> To the best of my knowledge, Google never offered any compensation to Mr. McLaughlin or other affected Gmail users.

<sup>10</sup> Ian Paul. “Google Toolbar Tracks Some Browsing Even When It’s Not Supposed To.” PC World. January 25, 2010. [http://www.pcworld.com/article/187670/google\\_toolbar\\_tracks\\_some\\_browsing\\_even\\_when\\_its\\_not\\_supposed\\_to.html](http://www.pcworld.com/article/187670/google_toolbar_tracks_some_browsing_even_when_its_not_supposed_to.html).

<sup>11</sup> Benjamin Edelman. “Google Toolbar Tracks Browsing Even After Users Choose ‘Disable’.” January 26, 2010. <http://www.benedelman.org/news/012610-1.html>.

<sup>12</sup> Barry Schwarz. “Disabling The Google Toolbar Doesn’t Stop Google From Tracking You.” January 26, 2010. <http://searchengineland.com/disabling-the-google-toolbar-doesnt-stop-google-from-tracking-you-34438>

<sup>13</sup> J. Nicholas Hoover. “White House Reprimands Deputy CTO.” Information Week. May 17, 2010. <http://www.informationweek.com/news/government/leadership/224900083>.



31. In addition, during February 2012, researchers discovered that Google was bypassing Safari and Internet Explorer privacy settings to collect data that those browsers would ordinarily decline to provide.<sup>14</sup> While Google ceased further collection via these methods, Google has not offered to delete information improperly collected, nor has Google offered to compensate affected users.

32. In each of these examples, Google's services worked in exactly the way Google's engineers designed, in a way any Google engineer could have noticed through straightforward testing and, in many instances, in a way Google staff specifically intended. Yet Google lacked authorization for these information collection and distribution practices.

*Rogue Google Employees Could Access or Redistribute Book Contents*

33. In September 2010, news reports revealed that David Barksdale, a senior Google engineer, had used his privileged position at Google to spy on four teenagers for months. Because Barksdale was a Site Reliability Engineer at Google, he was able to tap into call logs for Google Voice (records of phone calls to and from the youths), read the youths' instant message chat logs, and unblock himself from buddy lists in order to send instant messages to and from the youths. Barksdale used each of these methods to access the communications of the affected youths. While Google terminated Barksdale's employment after these practices became known, Barksdale was able to continue his practices for months without Google's internal controls noticing what he was doing.<sup>15</sup> Google subsequently admitted that it had previously caught at least one other Google staff person accessing user data without authorization.<sup>16</sup>

*Hackers Could Access or Redistribute Book Contents*

34. Outside hackers could access or redistribute book contents. Many hackers disagree with the public policy embodied in applicable copyright law. For example, during January 2012, hackers disabled web sites of the U.S. Department of Justice and FBI, trade associations Recording Industry Association of America and Motion Picture Association of America, and record labels Universal, BMI, and Warner Music Group, when hackers disapproved of possible revisions to copyright law then under discussion in Congress.<sup>17</sup> Google's digitized book contents thus could attract hackers seeking to redistribute notable information.

35. In January 2010, Google reported a "highly sophisticated and targeted attack on our corporate infrastructure originating from China that resulted in the theft of intellectual

<sup>14</sup> Jonathan Mayer. "Safari Trackers." February 17, 2012. <http://cyberlaw.stanford.edu/blog/2012/02/safari-trackers>.

<sup>15</sup> Adrian Chen. "GCreep: Google Engineer Stalked Teens, Spied on Chats." Gawker. September 14, 2010. <http://gawker.com/5637234/gcreep-google-engineer-stalked-teens-spied-on-chats>.

<sup>16</sup> Jacon Kincaid. "This Is the Second Time a Google Engineer Has Been Fired for Accessing User Data." TechCrunch. September 14, 2010.

<sup>17</sup> Ingrid Lunden. "SOPA Blackout, Anonymous-Style: FBI, DOJ Sites Downed In Megaupload Protest." paidContent.org. January 19, 2012. <http://paidcontent.org/article/419-sopa-blackout-anonymous-style-doj-riaa-hacked-in-megaupload-protest/>.

property from Google.”<sup>18</sup> A subsequent analysis by McAfee indicated that hackers had specifically sought access to the source code for Google systems, and that hackers had even obtained the ability to alter the source code for Google systems.<sup>19</sup> If Google cannot keep its own intellectual property secure from attackers, it is plausible to conclude that Google cannot keep book contents invulnerable to security breaches.

### **A Single Breach Could Cause Devastating Harm to the Class**

36. A single breach of the systems that store book contents could allow book contents to become ubiquitous online. In particular, after that single breach occurs, users are likely to copy and/or share the material en masse, preventing any subsequent efforts to resecure book contents. For example, on August 4, 2006, AOL posted twenty million searches performed by more than 650,000 users over a three-month period. Once AOL realized that posting this information was inadvisable (because it included myriad sensitive subjects and could be easily linked to individual AOL users), AOL removed the file from its servers the same week, but the file remains easily available, including on the web and via BitTorrent.<sup>20</sup> Similarly, Wikileaks in February 2010 began publishing hundreds of thousands of pages of classified material. The information remains easily available, including via straightforward Google searches. The information simply cannot be “unpublished” once it has become publicly available on the Internet.

37. Thus, if book contents become available once – via a breach of book copies scanned by others, via a breach in libraries’ copies of books scanned by Google, or via a breach of Google’s own systems – the book contents are likely to be available easily and indefinitely.

38. However remote one may consider the risk of book contents becoming available, that risk must be considered in light of the devastating impact to the Class if book contents become available.

### **Conclusion**

39. If Google’s practices of digitally copying, distributing and displaying books without rightsholder permission are found to be fair uses and become widespread, the market for books will be adversely impacted by the potential for security breaches. Conversely, requiring Google and others to obtain the permission of rights-holders before engaging in such practices could prompt negotiations between rights-holders and those who seek to digitally use their works, thereby fostering standards for the allocation of the costs and risks of any harm flowing from such security breaches.

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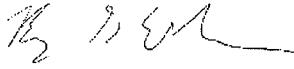
<sup>18</sup> David Drummond. Official Google Blog. January 12, 2010.

<http://googleblog.blogspot.com/2010/01/new-approach-to-china.html>.

<sup>19</sup> McAfee Labs. “Protecting Your Critical Assets: Lessons Learned from ‘Operation Aurora.’” March 2010. [http://www.wired.com/images\\_blogs/threatlevel/2010/03/operationaurora\\_wp\\_0310\\_fnl.pdf](http://www.wired.com/images_blogs/threatlevel/2010/03/operationaurora_wp_0310_fnl.pdf).

<sup>20</sup> For example, I searched Google for “AOL search torrent” (without quotes) on March 27, 2012. Among the first ten results, I found six locations where I could download the files. <http://gregsadsdetsky.com/aol-data/> presents nine different locations where the data remains available.

Signed April 2 2012,

A handwritten signature in black ink, appearing to read 'B. Edelman', written over a horizontal line.

Benjamin Edelman

## **EXHIBIT A**

27a Linnaean St.  
Cambridge, MA 02138

**Benjamin G. Edelman**

ben@benedelman.org  
(617) 359-3360

## Experience

Assistant professor, Harvard Business School. Negotiations, Organizations & Markets unit. (April 2007 – present)

Fields: Industrial organization, market design, information economics.

Research interests: Electronic markets. Internet advertising, reputation, and fraud. Automated data collection.

Teaching: Networked businesses, market design, information systems, online marketing, negotiation.

Independent consultant and expert witness (November 1999 – present)

Conducted quantitative analyses and empirical testing for a variety of clients including the American Civil Liberties Union, AOL, Microsoft, National Association of Broadcasters, National Football League, New York Times, Universal Music Group, and Washington Post on topics including online advertising, advertising fraud, spyware, spam, pay-per-click advertising and click fraud, Internet filtering, geolocation and targeting, privacy, security, automated data collection, and user interface design.

Qualified as an expert in Federal court on multiple occasions, and provided oral testimony under direct and cross examination.

Student Fellow / Technology Analyst, Berkman Center for Internet & Society (May 1998 – January 2004)

Conducted empirical studies of the Internet's domain name system, spyware/adware, content filtering by network intermediaries.

Developed software systems for interactive real-time communication among class/meeting participants. Designed and operated system for webcast of and remote participation in numerous Berkman Center, Harvard Law School, and Cambridge community events as well as twelve ICANN public meetings.

## Education

Harvard Graduate School of Arts & Sciences - Ph.D., Economics, 2007. Dissertation: "Topics in Internet Advertising."

Harvard Law School - J.D., 2005.

Harvard Graduate School of Arts & Sciences - A.M., Statistics, 2002.

Harvard College - A.B., Economics, *summa cum laude*, 2002; Phi Beta Kappa.

Woodrow Wilson Senior High School - Washington, DC: 1998; valedictorian.

## Representative Research

Internet Advertising and the Generalized Second Price Auction (*American Economic Review*, 2007)  
with Michael Ostrovsky and Michael Schwarz

Optimal Auction Design and Equilibrium Selection in Sponsored Search Auctions (*American Economic Review*, 2010)  
with Michael Schwarz

Strategic Bidder Behavior in Sponsored Search Auctions (*Decision Support Systems*, 2007) with Michael Ostrovsky

Measuring the Perpetrators and Funders of Typosquatting (*FC'10, SV LNCS*) with Tyler Moore; web introduction and appendix also available

Greedy Bidding Strategies for Keyword Auctions (*Proceedings of the 9th ACM Conference on Electronic Commerce*, 2007)  
with Matthew Cary, Aparna Das, Ioannis Giotis, Kurtis Heimerl, Anna Karlin, Claire Mathieu, and Michael Schwarz

On Best-Response Bidding in GSP Auctions (2008)  
with Matthew Cary, Aparna Das, Ioannis Giotis, Kurtis Heimerl, Anna Karlin, Claire Mathieu, and Michael Schwarz

Running Out of Numbers: Scarcity of IPv4 Addresses and What To Do About It (*Proceedings of AMMA*, 2009)

Adverse Selection in Online "Trust" Certifications (*Proceedings of ICEC 2009*)

Adverse Selection in Online "Trust" Certifications and Search Results (*Electronic Commerce Research and Applications*, 2011)

Deterring Online Advertising Fraud Through Optimal Payment in Arrears (*FC'09, SV LNCS*)

- Securing Online Advertising: Rustlers and Sheriffs in the New Wild West (published in *Beautiful Security*, 2009)
- Assessing and Improving the Safety of Internet Search Engines (published in *The Rising Power of Search Engines on the Internet*, 2006)
- Web Sites Sharing IP Addresses: Prevalence and Significance (2003) [cyber.law.harvard.edu/people/edelman/ip-sharing](http://cyber.law.harvard.edu/people/edelman/ip-sharing)
- Empirical Analysis of Internet Filtering in China (2002) with Jonathan Zittrain [cyber.law.harvard.edu/filtering/china](http://cyber.law.harvard.edu/filtering/china)  
Published in *IEEE Internet Computing* as "Internet Filtering in China" (March-April 2003)

## Long-Term Research Projects

- Strategies and Outcomes in Search Engine Advertising (2004-)
- "Spyware": Research, Testing, Legislation, and Suits (2002-) [benedelman.org/spyware](http://benedelman.org/spyware)
- Resources for Affiliates and Affiliate Merchants (2004-) [benedelman.org/affiliates](http://benedelman.org/affiliates)
- Documentation of Internet Filtering Worldwide (2002-2003) with Jonathan Zittrain [cyber.law.harvard.edu/filtering](http://cyber.law.harvard.edu/filtering)
- The Top-Level Domain Evaluation Project (2002-2003) with Jonathan Zittrain [cyber.law.harvard.edu/tlds](http://cyber.law.harvard.edu/tlds)
- Classroom and Meeting Technology Tools (1998-2002) [cyber.law.harvard.edu/meetingtools](http://cyber.law.harvard.edu/meetingtools)
- ICANN Public Meeting Archives, Notes, and Briefing Books (1998-2001) [cyber.law.harvard.edu/icann](http://cyber.law.harvard.edu/icann)  
[cyber.law.harvard.edu/ifwp](http://cyber.law.harvard.edu/ifwp)

## Additional Writings

- Advertising Disclosures: Measuring Labeling Alternatives in Internet Search Engines (2012)  
with Duncan Gilchrist *Information Economics and Policy*
- Internet Protocol Numbers and the American Registry for Internet Numbers: Suggested Guidance for Bankruptcy Trustees, Debtors-in-Possession, and Receivers. *BNA's Bankruptcy Law Reporter* (2012) with Steven Ryan and Matthew Martel
- Pricing and Efficiency in the Market for IP Addresses (2011) with Michael Schwarz
- The Design of Online Advertising Markets (forthcoming) *Handbook of Market Design*
- Earnings and Ratings at Google Answers (forthcoming) *Economic Inquiry*
- Bias in Search Results?: Diagnosis and Response (2011) *The Indian Journal of Law and Technology*
- Measuring Bias in "Organic" Web Search (2011) with Ben Lockwood [benedelman.org/searchbias](http://benedelman.org/searchbias)
- To Groupon or Not to Groupon: The Profitability of Deep Discounts (2010) *HBS Working Paper* – with Scott Kominers and Sonia Jaffe  
and To Groupon or Not To Groupon: New Research on Voucher Profitability (2011) *HBR Blogs*
- Least-Cost Avoiders in Online Fraud and Abuse (2010) *IEEE Security and Privacy*
- The Pathologies of Online Display Advertising Marketplaces (2010) *ACM Sigecom Exchanges*
- Competing Ad Auctions: Multi-homing and Participation Costs (2010) with Itai Ashlagi and Hoan Soo Lee
- Priced and Unpriced Online Markets (2009) (*Journal of Economic Perspectives*, summer 2009)
- Red Light States: Who Buys Online Adult Entertainment? (2009) (*Journal of Economic Perspectives*, winter 2009)
- Who Owns Metrics?: Building a Bill of Rights for Online Advertisers (2009) (*Journal of Advertising Research*, Dec. 2009)
- How to Combat Online Ad Fraud (2009) *Harvard Business Review*
- The Dark Underbelly of Online Advertising (2009) *Harvard Business Review Online – HBR Now*



Fraud in Online Advertising (2009) *The Business Standard (India)*

Typosquatting: Unintended Adventures in Browsing (2008) McAfee Security Journal

CPC/CPA Hybrid Bidding in a Second Price Auction (2008) with Hoan Soo Lee

When the Net Goes Dark and Silent (2002) South China Morning Post (op-ed)

The Effect of Editorial Discretion Book Promotion on Sales at Amazon.com (2001-2002)

Seymour and Ruth Harris Prize for Best Thesis in Economics, Thomas Temple Hoopes Prize for Undergraduate Research

## Web Site Writings

Search My Logs of Affiliate Fraud and Affiliate Fraud Information Lookup (2012) with Wesley Brandi

Hack-Based Cookie-Stuffing by Bannertracker-script (2012) benedelman.org/news/022712-1.html  
with Wesley Brandi

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## Teaching Cases and Notes

Airbnb (A) and (B) (HBS Case 912-019, -020) (and TN) (2011) with Michael Luca

Attack of the Clones: Birchbox Defends Against Copycat Competitors (HBS Case 912-010) (2011) with Peter Coles

The Online Economy: Strategy and Entrepreneurship - Course Architecture Note (HBS Note 911-069) (2011)  
with Peter Coles

Mobilizing Online Businesses (HBS Module Note 911-048) (2011) with Peter Coles

Online Marketing at Big Skinny (HBS Case 911-033) (and TN) (2011) with Scott Kominers

The iPhone at IVK (TN) (HBS Teaching Note 911-414) (2010)

Akamai, Inc. (HBS Case 804-158) (2010) with Thomas Eisenmann and Eric Van den Steen

Google Inc. and Google Inc. (Abridged) (HBS Case 910-036 and 910-032) (2010) (and TN) with Thomas Eisenmann

Personal Rapid Transport at Vectus, Inc. (HBS Case 910-010) (2010) (and TN)

eBay Partner Network (A), (B), and (C) (HBS Case 910-008, -009, and -012) (2009) (and TN) with Ian Larkin

Symbian, Google & Apple in the Mobile Space (A) and (B) (HBS Case 909-055, -056) (2009)  
with F. Suarez & A. Srinivasan

Distribution at American Airlines (A) and (B) (HBS Case 909-035 and -036) (and TN) (2009)

Windows Vista (HBS Case 909-038) (2009)



Online Restaurant Promotions (HBS Case 909-034) (and TN) (2009)  
Ad Classification at Right Media (HBS Case 909-032) (and TN) (2009)  
Consumer Payment Systems – United States (HBS Case 909-006) (2009) (and TN) with Andrei Hagiu  
Consumer Payment Systems – Japan (HBS Case 909-007) (2009) (and TN) with Andrei Hagiu  
TheLadders (HBS Case 908-061) (2008) (and TN) with Peter Coles, Brian Hall, and Nicole Bennett  
Opening Dot EU (A) and (B) (HBS Case 908-052 and -053) (2008)  
Microsoft adCenter (HBS Case 908-049) (and TN) (2008) with Peter Coles

### **Programming Experience**

Microsoft Visual Basic (15+ years experience), VB.NET	Mathworks MatLab	Stata
SPlus / R	Python	PHP

### **Awards**

Emerald Citations of Excellence Award (2011)  
ECCH Award for Outstanding Contribution to the Case Method – Strategy and General Management (2011)  
Best Paper Award, Honorable Mention – The 11<sup>th</sup> International Conference on Electronic Commerce (2009)  
Harvard University Graduate Economics Fellowship (2003-2006)  
John M. Olin Fellowship in Law and Economics (2003-2004, 2004-2005)  
Hoopes Prize for Undergraduate Research (2002)  
Seymour and Ruth Harris Prize for Best Honors Thesis in Economics (2002)  
John Harvard Scholarship, Harvard College (1998-1999, 1999-2000, 2000-2001)  
Rank I Honors, Harvard College (1998-1999, 1999-2000, 2000-2001)  
Phi Beta Kappa, Harvard College (2001)  
Undergraduate Honors Research Scholarship, Department of Economics, Harvard College (2001)  
Detur Prize, Harvard College (1999)

### **Congressional and Expert Testimony**

US Senate, Commerce Committee (2009) (statement for the record)  
US House of Representatives, Committee on the Judiciary (2008) (invited / hearing cancelled)  
US Senate, Committee on Commerce, Science, and Transportation (2008)  
Federal Trade Commission Public Hearing on Effectiveness of CAN-SPAM (2005)  
District Court, Third Judicial District of Utah (2004)  
US Federal Court, Eastern District of Michigan (2003)  
US House of Representatives, Committee on the Judiciary (2003)  
US Federal Court, Eastern District of Pennsylvania (2002)  
US Federal Court, Western District of Pennsylvania (2000)



**Academic Service**

Associate Editor: Journal of Economic Perspectives (2008-2012)

Referee: American Economic Review, Quarterly Journal of Economics, Journal of Applied Economics, RAND Journal of Economics, Management Science, Journal of Economics & Management Strategy, Sponsored Search Workshop, Workshop on the Economics of Information Security, Workshop on the Economics of Securing the Information Infrastructure, Manufacturing & Services Operations Management, The International Conference on Electronic Commerce (2009), International Review of Law and Economics, Journal of Industrial Economics, Operations Research, Berkeley Electronic Press – Policy & Internet, Review of Economic Studies, Economics Letters, Management Science, Review of Industrial Organization, Telecommunications Policy, Emerald Program

Program committee: Workshop on the Economics of Securing the Information Infrastructure (2006), Sponsored Search Workshop (2007), WWW2008, Fourth Workshop on Ad Auctions (2008), The First Conference on Auctions, Market Mechanisms and Their Applications (2009), ACM Conference on Electronic Commerce (2010), Workshop on the Economics of Information Security (2010), Workshop on the Economics of Information Security (2011), Seventh Workshop on Ad Auctions (2011), The Second Conference on Auctions, Market Mechanisms and Their Applications (2011), WWW2012

Co-organizer: Sixth Workshop on Ad Auctions (2010)

Non-resident tutor / senior common room member: Cabot House (2004-2012)

## **EXHIBIT B**

**Benjamin Edelman – Prior Testimony at Trial or Deposition**

<b>Proceeding</b>	<b>Court</b>	<b>Reference</b>	<b>Context</b>	<b>Year</b>	<b>On behalf of</b>
State of South Carolina v. Casale Media, Inc., et al.	South Carolina Court of Common Pleas, Richland County	08-CP-40-0729	Deposition	2008	Plaintiff
UMG Recordings, Inc., et al. v. Veoh Networks, Inc., et al.	U.S. District Court, Central District of California	No. CV 07-5744 AHM (AJWx)	Deposition	2009	Plaintiff
Netscape Communications Corp. v. Valueclick, Inc., et al.,	U.S. District Court, Eastern District of Virginia	No. 1:09-cv-225-TSE-IDD	Deposition	2009	Plaintiff
Arista Records, et al., v. Myxer, Inc., et al.	U.S. District Court, Central District of California	No. CV 08-03935 GAF (JCx)	Deposition	2009	Plaintiff
Stephanie Lens v. Universal Music Corp., et al.	United States District Court, Northern District of California	No. C 07-03783 JF (PVT)	Deposition	2010	Defendant

## **EXHIBIT C**

### **Exhibit C to Edelman Report**

1. The Fourth Amended Class Action Complaint
2. Google Objections and Responses to Plaintiffs' First Requests for Admissions
3. Plaintiffs' Brief in Support of Their Motion for Class Certification
4. Zack Decl. and Exhibits in support of motion for class certification
5. Google's Brief in Opposition to Class Certification
6. Declarations of Daniel Clancy, dated February 11, 2010, and February 7, 2012
7. Plaintiffs' brief in opposition to Google's motion to dismiss the Authors Guild
8. Cooperative Agreement between Google and the University of Michigan (from the University of Michigan website)
9. The Complaint and Plaintiffs' brief in support of motion for partial judgment on the pleadings in *Authors Guild, et al. v. Hathitrust, et al.*, 11 Civ. 6351 (HB)(S.D.N.Y.)
10. Defendant Google Inc.'s Supplemental Narrative Responses and Objections to Plaintiffs Second Request for Production of Documents and Things – Public Redacted Version
11. The books.google.com website
12. The materials cited in my report

## **EXHIBIT 40**



1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 Master File No. 05 CV 8136-DC

5 - - - - -x

6 THE AUTHORS GUILD, et al.,

7 Plaintiffs,

8 -against-

9 GOOGLE, INC.,

10 Defendant.

11 - - - - -x

12 June 1, 2012

13 9:55 a.m.

14 Deposition of BRUCE S. HARRIS,  
15 taken by attorneys for Plaintiffs, pursuant to  
16 notice, held at the offices of Milberg LLP, One  
17 Pennsylvania Plaza, New York, New York, before  
18 Helen Mitchell, a Shorthand Reporter and Notary  
19 Public.  
20  
21  
22  
23  
24  
25

<p style="text-align: right;">Page 2</p> <p>1 2 APPEARANCES: 3 4 BONI &amp; ZACK LLC Attorneys for Plaintiffs 5 15 St. Asaphs Road Bala Cynwyd, Pennsylvania 19004 6 7 BY: JOANNE ZACK, ESQ. jzack@bonzack.com 8 9 DURIE TANGRI LLP Attorneys for Defendant 10 217 Leidesdorff Street San Francisco, California 94111 11 12 BY: DAVID MCGOWAN, ESQ. dmcgowan@duriatangri.com 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 BRUCE S. HARRIS, 3 having been first duly sworn by the Notary 4 Public (Helen Mitchell), was examined and 5 testified as follows: 6 EXAMINATION 7 BY MS. ZACK 8 Q Good morning, Mr. Harris. 9 A Good morning. 10 Q Would you state your full name for 11 the record, please. 12 A Bruce Harris. 13 Q And where are you employed 14 currently? 15 A I'm a consultant, and I'm 16 self-employed. 17 MS. ZACK: I'm going to mark as PX 18 89 your expert report in this matter. 19 (Expert report by Mr. Harris 20 marked Exhibit PX 89 for 21 identification.) 22 Q Mr. Harris, is PX 89 your report 23 in this matter? 24 A Yes, it is. 25 Q And you've been retained as an</p>
<p style="text-align: right;">Page 3</p> <p>1 2 STIPULATIONS 3 4 IT IS HEREBY STIPULATED AND AGREED 5 by and between counsel for the 6 respective parties hereto, that the 7 filing, sealing and certification of the 8 within deposition shall be and the same 9 are hereby waived; 10 IT IS FURTHER STIPULATED AND 11 AGREED that all objections, except as to 12 the form of the question, shall be 13 reserved to the time of the trial. 14 IT IS FURTHER STIPULATED AND 15 AGREED that the within deposition may be 16 signed and sworn to before any officer 17 authorized to administer an oath with 18 the same force and effect as if signed 19 and sworn to before the Court. 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 Harris 2 expert; is that correct? 3 A That's correct. 4 Q By Google? 5 A Yes. 6 Q And what is your expertise in? 7 A Custom and practice in the 8 publishing industry. 9 Q Approximately when were you 10 retained? 11 A I guess two months ago, two and a 12 half months ago. 13 Q And did you write this report 14 yourself? 15 A Yes, I did. 16 Q Did you have any assistance? 17 A Yes. I wrote the first draft, and 18 Dave helped me. 19 Q Dave McGowan? 20 A Um-hum. 21 Q Anyone else? 22 A No. 23 Q So you didn't use any research 24 assistants -- 25 A No.</p>

2 (Pages 2 - 5)

<p style="text-align: right;">Page 6</p> <p>1 Harris</p> <p>2 Q -- or anything like that?</p> <p>3 MR. MCGOWAN: I'll caution you,</p> <p>4 Mr. Harris, wait until Miss Zack is</p> <p>5 finished with the questions so you don't</p> <p>6 speak over each other for the court</p> <p>7 reporter.</p> <p>8 MS. ZACK: For the sake of the</p> <p>9 court reporter.</p> <p>10 Q Referring you to Exhibit A to your</p> <p>11 declaration, which is your CV or biography, it</p> <p>12 says you began your publishing career at the</p> <p>13 Crown Publishing Group; is that right?</p> <p>14 A Correct.</p> <p>15 Q And what approximate years did you</p> <p>16 work at Crown publishing?</p> <p>17 A From 1960 through 1988.</p> <p>18 Q What positions did you hold there?</p> <p>19 A I was a promotion assistant,</p> <p>20 salesman, marketing manager, sales manager,</p> <p>21 director of publishing and publisher.</p> <p>22 Q And then your next employment was</p> <p>23 where?</p> <p>24 A Random House.</p> <p>25 Q And that was what approximate</p>	<p style="text-align: right;">Page 8</p> <p>1 Harris</p> <p>2 Q Can you give some examples of</p> <p>3 clients?</p> <p>4 A Yes. Presently I'm working with</p> <p>5 The Cooking Lab, which is a laboratory that was</p> <p>6 founded by Nathan Myhrvold, M-y-h-r-v-o-l-d.</p> <p>7 We're publishing a book called Modernist</p> <p>8 Cuisine. And I'm working for The Anomaly Group,</p> <p>9 A-n-o-m-a-l-y, and we're publishing a graphic</p> <p>10 novel called Anomaly.</p> <p>11 I'm also working for Skyhorse</p> <p>12 Publishing here in New York.</p> <p>13 Q When you say -- you said when you</p> <p>14 were at Crown Publishing you ultimately became</p> <p>15 publisher?</p> <p>16 A Yes.</p> <p>17 Q What does it mean to be publisher?</p> <p>18 A The editorial and marketing</p> <p>19 functions generally report to the publisher.</p> <p>20 Q What are the marketing functions,</p> <p>21 generally, in a publishing company?</p> <p>22 A Promotion, publicity, subsidiary</p> <p>23 rights, sales.</p> <p>24 Q Now, have you ever consulted for</p> <p>25 authors directly?</p>
<p style="text-align: right;">Page 7</p> <p>1 Harris</p> <p>2 years?</p> <p>3 A From '88 to '99.</p> <p>4 Q And what positions did you hold</p> <p>5 there?</p> <p>6 A I was director of publishing, and</p> <p>7 then I was president of trade, sales and</p> <p>8 marketing.</p> <p>9 Q And then your next employment was?</p> <p>10 A At Workman Publishers.</p> <p>11 Q From which dates, approximately?</p> <p>12 A Ninety-nine to 2004.</p> <p>13 Q And your positions there?</p> <p>14 A I was publisher and chief</p> <p>15 operating officer.</p> <p>16 Q And your next position?</p> <p>17 A I became a consultant.</p> <p>18 Q So that was in 2004?</p> <p>19 A Yes.</p> <p>20 Q Who did you consult for,</p> <p>21 generally?</p> <p>22 A Publishing companies and authors.</p> <p>23 Q In what areas?</p> <p>24 A Basically sales and marketing, and</p> <p>25 now self-publishing.</p>	<p style="text-align: right;">Page 9</p> <p>1 Harris</p> <p>2 A Yes.</p> <p>3 Q What types of things have you</p> <p>4 consulted on?</p> <p>5 A Mostly non-fiction books.</p> <p>6 Q And consulted about what sort of</p> <p>7 things?</p> <p>8 A By "things" do you mean topics?</p> <p>9 Q What did you give them advice</p> <p>10 about?</p> <p>11 A I gave them advice about whether</p> <p>12 they should be published by existing firms or</p> <p>13 publish on their own, marketing strategies,</p> <p>14 distribution, sales and fulfillment.</p> <p>15 Q Are you involved at all in any --</p> <p>16 you mentioned self-publishing.</p> <p>17 A Um-hum.</p> <p>18 Q What do you do as a consultant for</p> <p>19 self-publishers?</p> <p>20 A Set up a framework where an author</p> <p>21 can find distribution, sales and fulfillment</p> <p>22 from independent sources.</p> <p>23 Q Have you ever advised authors to</p> <p>24 publish in e-book form?</p> <p>25 A It's part of the publishing</p>

3 (Pages 6 - 9)

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Page 10

1 Harris

2 process today.

3 Q E-books?

4 A Yeah.

5 Q Have you ever previously --

6 switching topics slightly -- done any work for

7 Google?

8 A No.

9 Q Amazon?

10 A No.

11 Q Any e-book publishers?

12 A No.

13 Q Have you been an expert -- I see

14 in your -- I think it's Exhibit B -- that you

15 were an expert in one other case -- or C --

16 another case that's listed; is that correct?

17 A Yes.

18 Q And which case was that?

19 A That was JK Rowling versus RTR

20 Publishing.

21 Q And who did you testify for?

22 A RTR Publishing.

23 Q And what was that case about?

24 A RTR was putting out a Harry Potter

25 encyclopedia, and Miss Rowling objected.

Page 11

1 Harris

2 Q And what was the subject matter of

3 your expert report in that case?

4 A Whether the publication of a Harry

5 Potter encyclopedia would hurt her commercial

6 sales of the Harry Potter books.

7 Q And what was your opinion there?

8 A I said it would not hurt the sales

9 of Harry Potter books.

10 Q And do you know what the court

11 ruled in that case?

12 A They ruled for Miss Rowling, and

13 she settled the case.

14 Q You mean while it was on appeal?

15 A I guess so, yeah.

16 Q Have you been an expert in any

17 other matters?

18 A No.

19 Q Have you talked to any of the

20 other experts retained by Google in this case?

21 A No.

22 Q Did you speak to Miss Chevalier?

23 A Yes.

24 Q When was that?

25 A That was several weeks ago.

Page 12

1 Harris

2 Q And what was it you talked to her

3 about?

4 A Custom and practice in the book

5 business.

6 Q And what did you tell her?

7 A We were talking about how

8 conditions actually apply in publishing.

9 Q Can you be more specific?

10 A I'm not sure I remember exactly

11 what we discussed.

12 Q How long was the discussion?

13 A About 45 minutes.

14 Q Was it over the telephone?

15 A Yes.

16 Q Did anyone else participate?

17 A I don't think so.

18 Q And you can't remember what you

19 discussed with her other than that it was custom

20 and practice in the book business?

21 A Yeah.

22 Q You've attached to your report

23 various exhibits.

24 A Yes.

25 Q Are these all exhibits from books

Page 13

1 Harris

2 that you had some connection to?

3 A No, but they're things that came

4 to hand in the last few months.

5 Q Well, let's look at Exhibit D.

6 A Okay.

7 Q And what is this?

8 A These are the back covers of two

9 books published by Penguin.

10 Q And did you have anything -- were

11 you in any way involved in the publication of

12 these books?

13 A No, they were just in my library.

14 Q So do you have any knowledge about

15 whether anything on these back covers was there

16 by permission or not of the publisher or author?

17 A I don't have any direct knowledge

18 of that.

19 Q Looking at Exhibit E, which is

20 "Weird things customers say in bookstores," did

21 you represent in any way the publisher or author

22 of this book?

23 A No. I had worked for this

24 publisher previously.

25 Q Which publisher is that?

<p style="text-align: right;">Page 14</p> <p>1 Harris</p> <p>2 A The Overlook Press.</p> <p>3 Q You worked for them as a</p> <p>4 consultant?</p> <p>5 A Yes, I did.</p> <p>6 Q But with this particular book you</p> <p>7 had no involvement?</p> <p>8 A No.</p> <p>9 Q Do you know whether these</p> <p>10 selections were made by permission of the</p> <p>11 publisher or author?</p> <p>12 A I don't know.</p> <p>13 Q Where did you find these?</p> <p>14 A This is a little booklet,</p> <p>15 promotional booklet, that has been made by</p> <p>16 Overlook, which they're going to distribute next</p> <p>17 week at the book expo, give out to people -- to</p> <p>18 bookstores.</p> <p>19 Q So this Exhibit E, if we had the</p> <p>20 original rather than a copy, would be in the</p> <p>21 form of a booklet?</p> <p>22 A Yeah.</p> <p>23 Q And it's a promotional booklet</p> <p>24 that Overlook, the publisher, prepared itself?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 Harris</p> <p>2 MS. ZACK: Well...</p> <p>3 MR. McGOWAN: Objection, lacks</p> <p>4 foundation, calls for speculation.</p> <p>5 If you want to argue about the</p> <p>6 sequencing of questions and objections,</p> <p>7 we can do that, but I don't --</p> <p>8 MS. ZACK: I don't want to argue</p> <p>9 that, I just want to say that --</p> <p>10 MR. McGOWAN: I don't see the</p> <p>11 point.</p> <p>12 MS. ZACK: I'm just going to say</p> <p>13 that all objections -- all you need to</p> <p>14 do is say "object to the form." All</p> <p>15 objections are preserved other than to</p> <p>16 the form, and stating grounds for</p> <p>17 objections is a form of coaching.</p> <p>18 MR. McGOWAN: And that's</p> <p>19 incorrect.</p> <p>20 Q Exhibit F, could we turn to that,</p> <p>21 please.</p> <p>22 A Yes.</p> <p>23 Q And this is "Death Will Extend</p> <p>24 Your Vacation" by Elizabeth Zelvin; is that</p> <p>25 correct?</p>
<p style="text-align: right;">Page 15</p> <p>1 Harris</p> <p>2 Q And distributes at -- where?</p> <p>3 A At conventions, places where</p> <p>4 booksellers gather, and I assume they'll also</p> <p>5 probably let bookstores have them to give out to</p> <p>6 their customers.</p> <p>7 Q So it's an attempt by the</p> <p>8 publisher of the book to promote the book?</p> <p>9 A Exactly.</p> <p>10 Q And sales of the book; correct?</p> <p>11 A Yes.</p> <p>12 Q So we would assume that was by</p> <p>13 permission of a rights holder; correct?</p> <p>14 MR. McGOWAN: Objection, lacks</p> <p>15 foun --</p> <p>16 Q Do you have any reason to believe</p> <p>17 it lacks permission?</p> <p>18 MR. McGOWAN: Let me finish my</p> <p>19 objection.</p> <p>20 MS. ZACK: All you need to say is</p> <p>21 "objection."</p> <p>22 MR. McGOWAN: I can answer your</p> <p>23 question if you want me to. You can let</p> <p>24 me state my objection and not speak over</p> <p>25 it.</p>	<p style="text-align: right;">Page 17</p> <p>1 Harris</p> <p>2 A Yes.</p> <p>3 Q Do you know who the publisher is?</p> <p>4 A I don't know who the publisher is.</p> <p>5 Q Did you at any time represent</p> <p>6 Elizabeth Zelvin?</p> <p>7 A No.</p> <p>8 Q Where did you find this?</p> <p>9 A My wife is a mystery writer, and</p> <p>10 we go to mystery gatherings, and this was being</p> <p>11 given out.</p> <p>12 Q By whom?</p> <p>13 A By the author.</p> <p>14 Q So this, Exhibit F -- was this</p> <p>15 also in booklet form?</p> <p>16 A Yes.</p> <p>17 Q So if we had the original, what is</p> <p>18 Exhibit F would have been a booklet of what</p> <p>19 looks to be a chapter of the book Death Will</p> <p>20 Extend Your Vacation by Elizabeth Zelvin; is</p> <p>21 that correct?</p> <p>22 A Yes.</p> <p>23 Q And you received this at a</p> <p>24 gathering from the author herself?</p> <p>25 A Yes.</p>

5 (Pages 14 - 17)

Page 18

1 Harris

2 Q Did you discuss this with the

3 author?

4 A No.

5 Q Did you buy the book?

6 A No.

7 Q Exhibit G is a series of pages.

8 Is this all one handout?

9 A Yes.

10 Q Where did you get this, Exhibit G?

11 A I got this from the publisher.

12 Q And who is that?

13 A Clarkson Potter, which is a part

14 of Crown, which is a part of Random House.

15 Q And was this also in booklet form

16 when you received it?

17 A Yes. It's called a blad.

18 Q What is blad?

19 A A blad is when you have

20 illustrated books, it's a selling tool for

21 publishers to show booksellers and reviewers

22 what they're going to be coming out with in a

23 highly illustrated format.

24 Q So Exhibit G is what you're

25 calling a blad, which was in booklet form and

Page 19

1 Harris

2 distributed by the publisher; is that correct?

3 A That's correct.

4 Q What was it a blad for, which

5 book?

6 A Well, it's for all the books that

7 they were publishing this season. I think the

8 next-to-last page is a listing of the books. At

9 least some of the books, so they're both

10 cookbooks and style books.

11 Q This page (indicating) --

12 A That lists some of them, yes.

13 Q I can't read the text at the top.

14 Can you? Do you know what it says? It's very

15 light.

16 A I think it's an Amphoto -- Watson

17 Guptil -- it's the name of a different division

18 of Clarkson Potter, so it's Watson Guptil,

19 Potter Style and Amphoto.

20 Q And it says "Spring" -- two

21 thousand and --

22 A 2012. I think it's 2012. Yeah,

23 these are recent books.

24 Q Referring you to Exhibit H, what

25 is this?

Page 20

1 Harris

2 A This is from the Huffington Post,

3 and it was a page on Katie Workman's cookbook,

4 The Mom 100 Cookbook.

5 Q Did you have any connection to

6 this cookbook?

7 A No. I know Katie, but I have no

8 connection to the book.

9 Q And do you know who published it?

10 A Yes. This is published by

11 Workman.

12 Q Do you know if this -- what would

13 you call this page? Would you call this a promo

14 or --

15 A Yes.

16 Q Do you know if this promo was in

17 the Huffington Post by permission of the author

18 or publisher?

19 MR. McGOWAN: Objection, compound

20 and vague.

21 You may answer.

22 A I don't know.

23 Q You don't know?

24 A I don't know particularly.

25 Q You're familiar with Google Books?

Page 21

1 Harris

2 A Yes.

3 Q And you're familiar with the fact

4 that Google Books includes both books from the

5 Google Partner Program and books throughout the

6 Google Library Project?

7 A Yes.

8 Q The Google Partner Program

9 includes books by permission of the rights

10 holder; is that correct?

11 A Yes.

12 Q Did you -- I guess you became a

13 consultant in 2004, is that what you said?

14 A Yes.

15 Q At any time -- and your last

16 employment was at Workman?

17 A Yes.

18 Q Any time at Workman did you put

19 any books into the Google Partner Program?

20 A I don't recall.

21 Q Since then have you advised any of

22 your consulting clients to put books into the

23 Google Partner Program?

24 A No.

25 Q Have you advised any not to put



<p style="text-align: right;">Page 22</p> <p>1 Harris</p> <p>2 books in the Google Partner Program?</p> <p>3 A No.</p> <p>4 Q Just haven't given them advice</p> <p>5 about the Google Partner Program?</p> <p>6 A Right.</p> <p>7 Q Have you ever talked to anyone at</p> <p>8 Google, prior to your retention as their expert,</p> <p>9 about the Google Partner Program?</p> <p>10 A No.</p> <p>11 Q When did you first learn about the</p> <p>12 Google Library Project?</p> <p>13 A Oh, I think I read about it in the</p> <p>14 paper when it was first occurring.</p> <p>15 Q Did you ever discuss that with</p> <p>16 anyone from Google?</p> <p>17 A No.</p> <p>18 Q With anyone in the publishing</p> <p>19 industry?</p> <p>20 A Not that I recall.</p> <p>21 Q Are you aware that Google copies</p> <p>22 books for its Library Project without</p> <p>23 permission?</p> <p>24 A Yes.</p> <p>25 Q Referring you to the text of your</p>	<p style="text-align: right;">Page 24</p> <p>1 Harris</p> <p>2 Q You don't have any independent</p> <p>3 knowledge of that?</p> <p>4 A No.</p> <p>5 Q What about paragraph six?</p> <p>6 A Same.</p> <p>7 Q When you're a publisher and you</p> <p>8 want to sell books, you're interested in getting</p> <p>9 the books visibility; is that correct?</p> <p>10 A Yes.</p> <p>11 Q Did you ever have any</p> <p>12 responsibility for permissions for the use of</p> <p>13 quotes from books that you had published by</p> <p>14 other persons or books?</p> <p>15 MR. McGOWAN: Objection, lacks</p> <p>16 foundation.</p> <p>17 You may answer.</p> <p>18 Q Permission fees.</p> <p>19 A I'm not sure I understand the</p> <p>20 question.</p> <p>21 Q Are you conversant with the</p> <p>22 concept of permission fees --</p> <p>23 A Yes.</p> <p>24 Q -- for the use of books --</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 23</p> <p>1 Harris</p> <p>2 report -- well, before I do that, have you ever</p> <p>3 used Google Books?</p> <p>4 A For myself?</p> <p>5 Q Yes.</p> <p>6 A Yes.</p> <p>7 Q Have you looked at entire chapters</p> <p>8 of books in the Google -- in Google book search?</p> <p>9 A Occasionally I've seen, you know,</p> <p>10 longer...</p> <p>11 Q Seen longer?</p> <p>12 A Excerpts.</p> <p>13 Q Have you also seen shorter</p> <p>14 excerpts?</p> <p>15 A Yes.</p> <p>16 Q Referring you back to your report,</p> <p>17 on page 2 of your report, paragraph five, you</p> <p>18 talk about "Google has scanned more than 20</p> <p>19 books," et cetera.</p> <p>20 Do you see that?</p> <p>21 A Yes.</p> <p>22 Q Was the information in this</p> <p>23 paragraph based on your review of documents</p> <p>24 provided to you by Google?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 25</p> <p>1 Harris</p> <p>2 Q -- or some content of books?</p> <p>3 A Yes.</p> <p>4 Q Was that part of the business of</p> <p>5 Crown Publishing under your jurisdiction at any</p> <p>6 time while you were there?</p> <p>7 A Yes.</p> <p>8 Q And did you have a permissions</p> <p>9 department?</p> <p>10 A Not a whole department, but there</p> <p>11 was somebody who was responsible.</p> <p>12 Q What did they do?</p> <p>13 A When people asked for permissions</p> <p>14 they would set a rate and ask for money if</p> <p>15 somebody was going to use it, or they would let</p> <p>16 them use it for free.</p> <p>17 Q How was it determined whether to</p> <p>18 pay for the use of the text or to do it for</p> <p>19 free?</p> <p>20 A They were individual cases.</p> <p>21 Q So you mean it was decided based</p> <p>22 on how much was asked for, and --</p> <p>23 A What the book was, who was asking,</p> <p>24 what the use was going to be.</p> <p>25 Q And was a permissions department</p>

7 (Pages 22 - 25)

<p style="text-align: right;">Page 26</p> <p>1 Harris</p> <p>2 ever under your jurisdiction at Random House?</p> <p>3 A No, because they worked for the</p> <p>4 editors and publishers rather than the sales</p> <p>5 department.</p> <p>6 Q What about at Workman?</p> <p>7 A Yes.</p> <p>8 Q It was under your jurisdiction?</p> <p>9 A Yes.</p> <p>10 Q And was the procedure at Workman</p> <p>11 the same as it had been at Crown Publishing?</p> <p>12 A Yes.</p> <p>13 Q So you had one or more persons who</p> <p>14 worked in that area?</p> <p>15 A Yes.</p> <p>16 Q It was the case that fees were</p> <p>17 sometimes charged for permission to use excerpts</p> <p>18 of books?</p> <p>19 MR. McGOWAN: Objection, vague.</p> <p>20 You may answer.</p> <p>21 Q Is that correct, as a matter of</p> <p>22 custom and practice in the publishing industry?</p> <p>23 A Sometimes.</p> <p>24 Q Are you aware of any promotional</p> <p>25 uses of the books for which you were responsible</p>	<p style="text-align: right;">Page 28</p> <p>1 Harris</p> <p>2 A Yes, each contract can be a little</p> <p>3 bit different.</p> <p>4 Q Was it your understanding that</p> <p>5 Crown had the right vis-a-vis the author to</p> <p>6 promote the books --</p> <p>7 A Yes.</p> <p>8 Q -- that Crown was publishing?</p> <p>9 A Yes.</p> <p>10 Q And then Crown would take</p> <p>11 responsibility for the best way to promote the</p> <p>12 book; correct?</p> <p>13 A Yes.</p> <p>14 Q And if Crown decided it didn't</p> <p>15 want to release a chapter of the book for -- it</p> <p>16 would not do so; right?</p> <p>17 A Correct.</p> <p>18 Q You didn't create pamphlets with</p> <p>19 chapters for all your books, did you?</p> <p>20 A No.</p> <p>21 Q And how were those decisions made?</p> <p>22 A They were made by the marketing</p> <p>23 people and the editorial people.</p> <p>24 Q And what criteria did they take</p> <p>25 into account?</p>
<p style="text-align: right;">Page 27</p> <p>1 Harris</p> <p>2 at Crown that were not done by permission of</p> <p>3 Crown?</p> <p>4 A I'm not sure I understand what</p> <p>5 you're asking.</p> <p>6 Q While you were at Crown, Crown</p> <p>7 promoted its books.</p> <p>8 A Yeah.</p> <p>9 Q So Crown was deciding how to</p> <p>10 promote the books; correct?</p> <p>11 A Yes.</p> <p>12 Q And one of the ways they would</p> <p>13 promote them is to create little pamphlets;</p> <p>14 correct?</p> <p>15 A Yes.</p> <p>16 Q And when those pamphlets were</p> <p>17 created, Crown would decide what portion of the</p> <p>18 book to put into the pamphlets; correct?</p> <p>19 A That's correct, yes.</p> <p>20 Q And Crown had a contract with the</p> <p>21 author that gave it the right to promote the</p> <p>22 books; correct?</p> <p>23 MR. McGOWAN: Objection, vague,</p> <p>24 calls for a legal conclusion.</p> <p>25 You may answer.</p>	<p style="text-align: right;">Page 29</p> <p>1 Harris</p> <p>2 A Effectiveness; what would be</p> <p>3 effective, what they thought would be effective</p> <p>4 in the sale of the book.</p> <p>5 Q And did they do that based on</p> <p>6 their knowledge of the book itself?</p> <p>7 A Yes.</p> <p>8 Q And what they thought would best</p> <p>9 promote the sales of the book?</p> <p>10 A Yes.</p> <p>11 Q And did you ever sue anyone for</p> <p>12 copyright infringement while you were at Crown?</p> <p>13 A No.</p> <p>14 Q Never?</p> <p>15 A I didn't.</p> <p>16 Q Did someone on your behalf?</p> <p>17 A I don't think so.</p> <p>18 Q What about at Random House?</p> <p>19 A I'm sure there were suits, but I</p> <p>20 had nothing to do with them.</p> <p>21 Q What about at Workman?</p> <p>22 A No, I don't think so.</p> <p>23 Q You're not litigious?</p> <p>24 A No. Thank God.</p> <p>25 Q While you worked at Crown, did</p>

<p style="text-align: right;">Page 30</p> <p>1 Harris</p> <p>2 anyone other than the author or publisher, in</p> <p>3 your experience, ever come out with a booklet</p> <p>4 that had a whole chapter of one of your books?</p> <p>5 A Not that I know of.</p> <p>6 Q How about a booklet that had</p> <p>7 excerpts from 30 pages of one of your books?</p> <p>8 A Not that I know of.</p> <p>9 Q How about a booklet that had</p> <p>10 excerpts from 75 percent of your books?</p> <p>11 A No.</p> <p>12 Q What about at Random House?</p> <p>13 A No.</p> <p>14 Q What about at Workman?</p> <p>15 A I don't think so.</p> <p>16 Q Now, in this modern world of</p> <p>17 digital computers which we've all come into,</p> <p>18 there are many ways to promote books that there</p> <p>19 didn't used to be; isn't that correct?</p> <p>20 A Yes.</p> <p>21 Q Including authors have websites;</p> <p>22 is that right?</p> <p>23 A That's correct.</p> <p>24 Q And you advise authors with</p> <p>25 respect to how they can promote books on their</p>	<p style="text-align: right;">Page 32</p> <p>1 Harris</p> <p>2 when you search on -- I'm talking about the main</p> <p>3 Google -- if you put a search term in, they will</p> <p>4 search the web to find a match?</p> <p>5 A Yes.</p> <p>6 MR. McGOWAN: I'll object, vague</p> <p>7 with respect to the phrase "index."</p> <p>8 Q Well, let me ask you this --</p> <p>9 MR. McGOWAN: Miss Zack may</p> <p>10 actually want to specify what she's</p> <p>11 talking about. I suspect what's going</p> <p>12 on is that we're dealing in adjectives</p> <p>13 that have not been specified.</p> <p>14 Q Looking at Exhibit A, which is</p> <p>15 your bio that we previously looked at, is that</p> <p>16 on the internet?</p> <p>17 A Yes.</p> <p>18 Q And if I go to Google and I type</p> <p>19 in "Bruce Harris" do you know if I'll get a link</p> <p>20 to your bio?</p> <p>21 A Eventually.</p> <p>22 Q Have you ever done that?</p> <p>23 A I haven't. I think there's a</p> <p>24 judge in New Jersey, though.</p> <p>25 Q I'm sorry.</p>
<p style="text-align: right;">Page 31</p> <p>1 Harris</p> <p>2 own websites?</p> <p>3 A Yes.</p> <p>4 Q And is it your understanding that</p> <p>5 if an author puts up a website promoting his or</p> <p>6 her book, that the result -- that that website</p> <p>7 will be searched and results will show up on</p> <p>8 Google?</p> <p>9 MR. McGOWAN: Objection,</p> <p>10 incomplete hypothetical and radically</p> <p>11 compound.</p> <p>12 MS. ZACK: It's a hypothetical.</p> <p>13 A I don't know about the results</p> <p>14 appearing on Google.</p> <p>15 Q You've never checked that to see</p> <p>16 whether it did or didn't?</p> <p>17 A No.</p> <p>18 Q Do you understand how Google</p> <p>19 search engine works?</p> <p>20 A I think so, roughly.</p> <p>21 Q How does it work?</p> <p>22 A They're looking for key phrases.</p> <p>23 Q Well, is it your understanding</p> <p>24 that Google's search engine indexes the World</p> <p>25 Wide Web, what we call the internet, so that</p>	<p style="text-align: right;">Page 33</p> <p>1 Harris</p> <p>2 A Same name, a judge in New Jersey.</p> <p>3 Q So you're not really familiar with</p> <p>4 the way Google's main search engine works?</p> <p>5 A No.</p> <p>6 Q What kind of advice do you give</p> <p>7 your author clients about whether or not they</p> <p>8 should put excerpts from their books on their</p> <p>9 own websites?</p> <p>10 A I think they should have the most</p> <p>11 promotional website that they can have with the</p> <p>12 best material, whether it's from the book or</p> <p>13 featuring features in the book.</p> <p>14 Q Have you ever advised an author to</p> <p>15 not include portions of the book, but to promote</p> <p>16 the book in other ways?</p> <p>17 A I don't -- that's too broad, I</p> <p>18 can't -- I can't say yes or no.</p> <p>19 Q Have you ever given an author</p> <p>20 advice about how much of the book they should</p> <p>21 make available in order to promote it?</p> <p>22 A No.</p> <p>23 Q Have you about a publisher?</p> <p>24 A We've talked about different ways</p> <p>25 to promote chapters or topics.</p>

9 (Pages 30 - 33)

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1 Harris

2 Q And what different ways have you

3 suggested to publishers?

4 A Using single topics, which can be

5 then used in a variety of ways. So not just the

6 entire book, but parts of it.

7 Q Do you think it's easier for

8 authors to promote books nowadays with the World

9 Wide Web, or harder?

10 A Both.

11 Q How is it easier?

12 A Easier because the web obviously

13 gives you the facility to reach a wide audience

14 at meaningful cost, but harder because there's

15 so much more activity, which I call static.

16 Q Do you ever advise authors or

17 publishers of out-of-print books as to how to

18 promote their books?

19 A No.

20 Q Why not?

21 A I've never had a client with

22 out-of-print books.

23 Q Is there any point in promoting an

24 out-of-print book?

25 MR. McGOWAN: Objection, lacks

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1 Harris

2 foundation, it's a hypothetical.

3 You may answer.

4 A I like to say a book is new to

5 somebody who hasn't read it, so I don't know.

6 Q In your report you mention Amazon

7 Search Inside the Book.

8 A Yes.

9 Q And that's a feature of Amazon

10 that is -- required permission of the author or

11 the publisher or the rights holder of the book;

12 is that right?

13 A I think so.

14 Q You don't know for sure?

15 A I don't know for sure.

16 MS. ZACK: Let's mark as PX 90

17 materials from the internet concerning

18 Amazon.com Search Inside the Book

19 program, five pages.

20 (Amazon Search Inside the Book

21 FAQs marked Exhibit PX 90 for

22 identification.)

23 Q Have you ever seen these --

24 A No.

25 Q -- FAQs concerning Amazon's Search

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1 Harris

2 Inside the Book program?

3 A No, I've never seen this before.

4 Q Have you ever advised any of your

5 clients regarding Amazon's Search Inside the

6 Book program or feature?

7 A No.

8 Q If you look at page 2 of this

9 exhibit, there's print book FAQs.

10 Do you see that?

11 A Yes.

12 Q It says:

13 "What rights do I need to have to

14 participate in Look Inside the Book program?

15 "In order to submit books for Look

16 Inside you must hold the merchandising rights

17 for the book you wish to submit and the region

18 you're submitting for."

19 Do you see that?

20 A I see it.

21 Q Did you ever have an understanding

22 that Amazon could -- that Amazon's program was

23 not by permission?

24 A No.

25 Q Could you look at page 4, numbered

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1 Harris

2 page 4, it says "4 of 5" at the top. About

3 two-thirds down there's a question, "What is the

4 flexible percent viewing limit feature?

5 And it says, "The flexible percent

6 viewing limit feature gives print book

7 publishers control over how much of the book is

8 available for customers to view."

9 Do you see that?

10 A I see the flexible percent viewing

11 limit feature; is that what you're --

12 Q Yes.

13 It states that it gives publishers

14 control over how much of a book is available for

15 customers to view.

16 A Um-hum.

17 Q Is that similar to the control

18 that you had as a publisher when you decided how

19 much of a book to promote?

20 MR. McGOWAN: Objection, lacks

21 foundation.

22 You may answer.

23 A As a publisher and promotion

24 person, I thought I could use almost any

25 material that would help promote the book.

<p style="text-align: right;">Page 38</p> <p>1 Harris</p> <p>2 Q And is it your opinion that</p> <p>3 Google, with no permission from either the</p> <p>4 author or publisher, can do the same thing?</p> <p>5 MR. McGOWAN: Objection to the</p> <p>6 extent it calls for a legal conclusion.</p> <p>7 You may answer.</p> <p>8 And vague with respect to "same</p> <p>9 thing."</p> <p>10 You may answer.</p> <p>11 Q Well, I'll make it clear.</p> <p>12 You said you thought as a</p> <p>13 publisher you could promote the book in any way</p> <p>14 you thought fit, basically; correct?</p> <p>15 A Yes.</p> <p>16 Q Are you offering an opinion here</p> <p>17 that Google, without any permission from a</p> <p>18 rights holder of the book, can do that?</p> <p>19 A Yes.</p> <p>20 Q So if I, Joanne Zack, decide that</p> <p>21 I love a book, let's say one of the books you</p> <p>22 published previously for Crown -- what books did</p> <p>23 you love --</p> <p>24 A Let's say Hitchhiker's Guide to</p> <p>25 the Galaxy.</p>	<p style="text-align: right;">Page 40</p> <p>1 Harris</p> <p>2 MR. McGOWAN: Objection, vague</p> <p>3 with respect to "looks the other way,"</p> <p>4 incomplete hypothetical.</p> <p>5 You may answer.</p> <p>6 A I think most authors would be</p> <p>7 delighted to have third parties say "I love this</p> <p>8 book" and give examples.</p> <p>9 Q Your opinion is that most authors</p> <p>10 would be delighted.</p> <p>11 A Yes.</p> <p>12 Q My question was have you seen it</p> <p>13 happen?</p> <p>14 A You said five chapters? No.</p> <p>15 Q Have you seen third parties with</p> <p>16 no permissions publish one chapter?</p> <p>17 A Not a chapter, but certainly</p> <p>18 paragraphs from books that appear on websites,</p> <p>19 "I love this book," and then quotes.</p> <p>20 Q Paragraphs?</p> <p>21 A Yeah.</p> <p>22 Q Anything more than paragraphs.</p> <p>23 A Not that I know of.</p> <p>24 Q And you're not offering any</p> <p>25 opinions as a matter of law here?</p>
<p style="text-align: right;">Page 39</p> <p>1 Harris</p> <p>2 Q Hitchhiker's Guide to the Galaxy,</p> <p>3 I love that book. It's still in copyright,</p> <p>4 isn't it?</p> <p>5 A Yes.</p> <p>6 Q I decide I want to promote it. So</p> <p>7 I decide to put up five chapters on Boni &amp; Zack</p> <p>8 and I say, "I love this book, you will too"; is</p> <p>9 that okay?</p> <p>10 A I think that would be okay.</p> <p>11 Q It's okay with you?</p> <p>12 A Yes.</p> <p>13 Q You're not litigious?</p> <p>14 A No.</p> <p>15 Q Are you expressing an opinion</p> <p>16 whether that violates the copyright laws?</p> <p>17 A No, I don't know about the</p> <p>18 copyright law, I'm not an expert on it.</p> <p>19 Q Have you ever seen that happen,</p> <p>20 where a publisher looks the other way when</p> <p>21 someone --</p> <p>22 MR. McGOWAN: On the Boni &amp; Zack</p> <p>23 website.</p> <p>24 Q -- publishes on a website five</p> <p>25 chapters of a book in copyright?</p>	<p style="text-align: right;">Page 41</p> <p>1 Harris</p> <p>2 A No.</p> <p>3 Q Have you written any books?</p> <p>4 A Way back when.</p> <p>5 Q Are they still in copyright?</p> <p>6 A Probably not.</p> <p>7 Q Probably not?</p> <p>8 A Probably not. Well, maybe. I</p> <p>9 don't know.</p> <p>10 Q Were they registered?</p> <p>11 A Yes.</p> <p>12 Q Do you promote them?</p> <p>13 A No.</p> <p>14 It was more editing than writing;</p> <p>15 they were art books.</p> <p>16 Q Are you familiar with any revenues</p> <p>17 that are derived from either Search Inside the</p> <p>18 Book or the Partner Program, Amazon's Search</p> <p>19 Inside the Book or the Google Partner Program,</p> <p>20 by the persons who participate?</p> <p>21 A No.</p> <p>22 Q You don't know anything about</p> <p>23 that?</p> <p>24 A No.</p> <p>25 Q Do you know of any revenues that</p>



<p style="text-align: right;">Page 42</p> <p>1 Harris</p> <p>2 are derived from any promotional uses of books?</p> <p>3 MR. McGOWAN: Objection, vague</p> <p>4 with respect to "derived."</p> <p>5 You may answer.</p> <p>6 Q Earned.</p> <p>7 MR. McGOWAN: By whom is the</p> <p>8 objection?</p> <p>9 MS. ZACK: Anyone.</p> <p>10 A I don't know.</p> <p>11 MS. ZACK: Let's take a short</p> <p>12 break.</p> <p>13 (Recess taken)</p> <p>14 MS. ZACK: Let's mark as PX 91</p> <p>15 four pages entitled "Google Books</p> <p>16 Partner Program Standard Terms and</p> <p>17 Conditions," from the internet.</p> <p>18 (Document entitled "Google Books</p> <p>19 Partner Program Standard Terms and</p> <p>20 Conditions" marked Exhibit PX 91 for</p> <p>21 identification.)</p> <p>22 Q Have you seen this before,</p> <p>23 Mr. Harris?</p> <p>24 A No.</p> <p>25 Q This is a Partner Program,</p>	<p style="text-align: right;">Page 44</p> <p>1 Harris</p> <p>2 Q You didn't know that before today?</p> <p>3 A No.</p> <p>4 Q Now, if a book is out of print,</p> <p>5 how does Google's displaying it help the author</p> <p>6 sell the book?</p> <p>7 A I assume that people can search</p> <p>8 and find it.</p> <p>9 Q But if it's out of print, how</p> <p>10 can -- what is the author or the publisher</p> <p>11 getting out of it?</p> <p>12 A It may be available in e-book</p> <p>13 form.</p> <p>14 Q What if it's not?</p> <p>15 A I don't know.</p> <p>16 Q You don't know whether --</p> <p>17 A I don't know how it would help.</p> <p>18 It's possible that if a lot of people click on</p> <p>19 that title, a publisher or an author will bring</p> <p>20 it back into print if there was demand.</p> <p>21 Q Do you have any evidence that</p> <p>22 that's happening?</p> <p>23 A No.</p> <p>24 Q Do you know if Google reports to</p> <p>25 authors and publishers of books that it puts</p>
<p style="text-align: right;">Page 43</p> <p>1 Harris</p> <p>2 basically contract, or terms and conditions,</p> <p>3 that a rights holder can enter into with Google</p> <p>4 to participate in the Partner Program.</p> <p>5 A (Nodding)</p> <p>6 Q If you look on page 2, you'll see</p> <p>7 paragraph eight, "Ads Payment."</p> <p>8 A Yes.</p> <p>9 Q It talks about payment for ads on</p> <p>10 pages with authorized content.</p> <p>11 You have no knowledge about this</p> <p>12 feature of the Partner Program?</p> <p>13 A No.</p> <p>14 Q Do you understand the Partner</p> <p>15 Program to be promotional?</p> <p>16 A Yes.</p> <p>17 Q And do you understand that Google</p> <p>18 places ads on some portions of the content that</p> <p>19 is authorized by participants in the Partner</p> <p>20 Program?</p> <p>21 A Yes.</p> <p>22 Q And do you understand that Google</p> <p>23 shares a portion of the ad revenues based on</p> <p>24 clicks with its Partner Program participants?</p> <p>25 A I see that.</p>	<p style="text-align: right;">Page 45</p> <p>1 Harris</p> <p>2 into Google Books through the Library Project</p> <p>3 how much people have clicked on ads?</p> <p>4 A No.</p> <p>5 Q You don't know one way or the</p> <p>6 other?</p> <p>7 A No.</p> <p>8 Q Do you know how Google earns money</p> <p>9 from its business?</p> <p>10 MR. McGOWAN: Objection, vague.</p> <p>11 You may answer.</p> <p>12 A Only what I've read in the papers</p> <p>13 about advertising revenue.</p> <p>14 Q So what's your understanding?</p> <p>15 A People pay money to advertise</p> <p>16 their services or products, and when the ad is</p> <p>17 read, Google gets money from the advertiser.</p> <p>18 Q Do you know what percentage of</p> <p>19 books copied by Google in the Library Project</p> <p>20 were out of print as opposed to in print?</p> <p>21 A No, I don't.</p> <p>22 Q Have you ever advised any</p> <p>23 publishers or authors of out-of-print books how</p> <p>24 best to put those books back into print?</p> <p>25 A No.</p>

12 (Pages 42 - 45)

<p style="text-align: right;">Page 46</p> <p>1 Harris</p> <p>2 Q Are you familiar with services</p> <p>3 such as iUniverse, which will create e-books of</p> <p>4 out-of-print works?</p> <p>5 A Yes.</p> <p>6 Q Are you familiar with any other</p> <p>7 services like that?</p> <p>8 A I know there are quite a few, but</p> <p>9 I don't know the names of them.</p> <p>10 Q Have you ever advised any author</p> <p>11 or publisher to use any of those services?</p> <p>12 A No.</p> <p>13 Q Do you consider yourself an expert</p> <p>14 in e-book publishing?</p> <p>15 A No.</p> <p>16 Q Do you consider yourself an expert</p> <p>17 in using the internet for promotional purposes?</p> <p>18 MR. McGOWAN: Objection, lacks</p> <p>19 foundation.</p> <p>20 You may answer.</p> <p>21 A I'm familiar with using the</p> <p>22 internet as a promotional vehicle.</p> <p>23 Q Do you consider yourself an expert</p> <p>24 in it?</p> <p>25 A It's changing so fast, I wouldn't</p>	<p style="text-align: right;">Page 48</p> <p>1 Harris</p> <p>2 You may answer.</p> <p>3 A It's part of what I do. I don't</p> <p>4 know how much.</p> <p>5 Q Would it be fair to say that you</p> <p>6 focus more of your consulting practice on print</p> <p>7 publishing?</p> <p>8 A No, I think at this point it's</p> <p>9 50/50.</p> <p>10 Q When did it become 50/50?</p> <p>11 A Oh, I guess about five years ago.</p> <p>12 Q Have you personally made any</p> <p>13 promotional decisions for any books since you</p> <p>14 left Workman Publishers?</p> <p>15 A Yes.</p> <p>16 Q So you've done that in your</p> <p>17 capacity as a consultant?</p> <p>18 A Yes.</p> <p>19 Q Has that been for publishers?</p> <p>20 A For authors and publishers.</p> <p>21 Q Have any of them delegated to you</p> <p>22 the right to make their promotional decisions?</p> <p>23 MR. McGOWAN: Objection, vague.</p> <p>24 You may answer.</p> <p>25 A In consultation.</p>
<p style="text-align: right;">Page 47</p> <p>1 Harris</p> <p>2 say I'm an expert.</p> <p>3 Q You left Workman in 2004.</p> <p>4 A Yes.</p> <p>5 Q And a lot has happened since then.</p> <p>6 A That's right.</p> <p>7 Q With respect to the internet,</p> <p>8 anyway.</p> <p>9 A Yeah.</p> <p>10 Q Do you think you've kept up with</p> <p>11 all that?</p> <p>12 A I've --</p> <p>13 MR. McGOWAN: Objection, vague.</p> <p>14 A I've kept up with as much as I</p> <p>15 can.</p> <p>16 Q Do you work full-time as a</p> <p>17 consultant?</p> <p>18 A No.</p> <p>19 Q Approximately how much time do you</p> <p>20 work now?</p> <p>21 A About four days a week.</p> <p>22 Q How much of your time is devoted</p> <p>23 to working on matters involving digital rights,</p> <p>24 digital promotion or digital publication?</p> <p>25 MR. McGOWAN: Objection, compound.</p>	<p style="text-align: right;">Page 49</p> <p>1 Harris</p> <p>2 Q So you've given them advice,</p> <p>3 basically?</p> <p>4 A Yes.</p> <p>5 Q With respect to approximately how</p> <p>6 many books?</p> <p>7 A Say about 25 or 30.</p> <p>8 Q So 25 or 30 books since 2004?</p> <p>9 A Yeah.</p> <p>10 Q With respect to none of these</p> <p>11 books have you advised your client to utilize</p> <p>12 Google Library Project?</p> <p>13 A No.</p> <p>14 Q You have not?</p> <p>15 A It has not been part of what I've</p> <p>16 advised, no.</p> <p>17 Q And with respect to those 25 or 30</p> <p>18 books, you have not advised any of them to use</p> <p>19 Amazon's Search Inside the Book function?</p> <p>20 A I recommended that they use it.</p> <p>21 Q Oh, you did recommend that?</p> <p>22 A Yes.</p> <p>23 Q With respect to how many books?</p> <p>24 A I would say all of them.</p> <p>25 Q Did you recommend any other</p>

Page 50

1 Harris

2 digital promotions other than Amazon for any of

3 the 25 to 30 books?

4 MR. McGOWAN: Objection, vague.

5 You may answer.

6 A Yes.

7 Q What other types of digital

8 promotion?

9 A Book trailers, contests, games.

10 Q Anything else?

11 A Nothing specific I can remember.

12 Q What's a book trailer?

13 A A book trailer is a -- like a

14 movie trailer, like a small feature, video

15 feature, about the book.

16 Q Like an interview with the author?

17 A Could be an interview with the

18 author, it could be pages from the book, it

19 could be sound and light; it could be anything.

20 Q So you didn't give the same advice

21 for each of these 25 to 30 books?

22 A No, no.

23 Q And when you gave advice about how

24 to promote the book, what were your

25 considerations?

Page 51

1 Harris

2 A The target market and the amount

3 of money of you could spend, our budget.

4 Q Anything else?

5 A No.

6 Q Now, with respect -- going back to

7 Google Books itself, you said you had done a

8 search for a book title or some sort of search?

9 A Yeah.

10 Q Did you do any search within the

11 books, where you put -- after you found a book,

12 you then searched within the book?

13 A No.

14 Q When you've done your searches,

15 have you used the Google main search engine or

16 have you gone to the Google Books --

17 A I went to the Google Books. Both,

18 I guess.

19 Q Let's talk about Google Books.

20 When you went to Google Books, how

21 did you search? Did you put in the name of a

22 book, or did you put in just a general search

23 term?

24 A Both.

25 Q And what type of results did you

Page 52

1 Harris

2 see?

3 A I would get -- book titles would

4 come up.

5 Q And with respect to those titles,

6 did you ever look -- do any searches within the

7 books?

8 A Yes.

9 Q Did you ever see a search result

10 that was snippets only and it said that this was

11 from the Library Project?

12 A Yes.

13 Q And how many searches did you do

14 within a single book?

15 A Two or three.

16 Q And you stopped?

17 A Yeah.

18 Q What was the purpose of doing the

19 searches?

20 A Just to see how it worked, find

21 out a particular piece of information.

22 Q Was that in connection with your

23 retention?

24 A Lately, yes.

25 Q Through Google?

Page 53

1 Harris

2 A Yes.

3 Q Had you done that before you were

4 retained by Google?

5 A No.

6 MS. ZACK: I don't have any other

7 questions.

8 MR. McGOWAN: I don't have any

9 questions.

10 (Time noted: 11:03 a.m.)

11

12

13 BRUCE S. HARRIS

14

15 Signed and subscribed to before me

16 this \_\_\_\_ day of \_\_\_\_\_, 2012.

17

18

19 Notary Public

20

21

22

23

24

25



Page 54		Page 56	
1		1	ERRATA SHEET
2	CERTIFICATE	2	VERITEXT REPORTING COMPANY
3		3	1250 BROADWAY
4	I, HELEN MITCHELL, a Shorthand	4	NEW YORK, NEW YORK 10001
5	Reporter and Notary Public, do hereby	5	800-362-2520
6	certify:	6	CASE: AUTHORS GUILD, ET AL. VS. GOOGLE, INC.
7	I reported the proceedings in the	7	DEPOSITION DATE: JUNE 1, 2012
8	within-entitled matter, and that the	8	DEPONENT: BRUCE S. HARRIS
9	within transcript is a true record of	9	PAGE LINE(S) CHANGE REASON
10	such proceedings.	10	
11	I further certify that I am not	11	
12	related, by blood or marriage, to any of	12	
13	the parties in this matter and that I am	13	
14	in no way interested in the outcome of	14	
15	this matter.	15	
16	IN WITNESS WHEREOF, I have	16	
17	hereunto set my hand this 6th day	17	
18	of June, 2012.	18	
19		19	
20		20	
21	HELEN MITCHELL	21	BRUCE S. HARRIS
22		22	SUBSCRIBED AND SWORN TO BEFORE ME
23		23	THIS ____ DAY OF _____, 20__.
24		24	
25		25	(NOTARY PUBLIC) MY COMMISSION EXPIRES:
Page 55			
1			
2	June 1, 2012		
3	INDEX		
4	WITNESS EXAMINATION BY PAGE		
5	BRUCE S. HARRIS Ms. Zack 4		
6			
7	EXHIBITS		
8			
9	FOR IDENTIFICATION PAGE		
10	Exhibit PX 89 Expert report by Mr. 4		
11	Harris		
12	Exhibit PX 90 Amazon Search Inside the 36		
13	Book FAQs		
14			
15	Exhibit PX 91 Document entitled 43		
16	"Google Books Partner		
17	Program Standard Terms		
18	and Conditions"		
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15 (Pages 54 - 56)

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1 Harris

2 A Yes.

3 Q Had you done that before you were  
4 retained by Google?

5 A No.

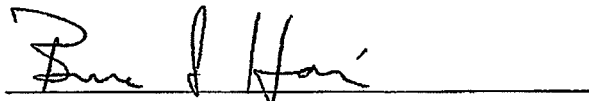
6 MS. ZACK: I don't have any other  
7 questions.

8 MR. MCGOWAN: I don't have any  
9 questions.

10 (Time noted: 11:03 a.m.)

11

12



13

BRUCE S. HARRIS

14

15 Signed and subscribed to before me

16 this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

17

18

19 \_\_\_\_\_  
Notary Public

20

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25

## **EXHIBIT 41**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE AUTHORS GUILD, INC., )  
Associational Plaintiff, BETTY )  
MILES, JOSEPH GOULDEN, and JIM )  
BOUTON, on behalf of themselves )  
and all other similarly situated, )

Plaintiffs, )

- against - )

GOOGLE INC., )

Defendant. )

Civil Action No.  
05 CV 8136 (DC)

One Penn Plaza  
New York, New York

June 6, 2012  
10:31 a.m.

Deposition of ALBERT N. GRECO, held at the  
offices of MILBERG LLP, before LINDA DEVECKA, a  
Notary Public of the State of New York.

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 BONI &amp; ZACK, LLC</p> <p>5 Attorneys for Plaintiffs</p> <p>6 15 St. Asaphs Road</p> <p>7 Bala Cynwyd, Pennsylvania 19004</p> <p>8 BY: JOANNE ZACK, ESQ.</p> <p>9</p> <p>10</p> <p>11 DURIE TANGRI LLP</p> <p>12 Attorneys for Defendant</p> <p>13 217 Leidesdorff Street</p> <p>14 San Francisco, California 94111</p> <p>15 BY: DAVID McGOWAN, ESQ.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 MS. ZACK: Mark this, please.</p> <p>3 (Plaintiff's Exhibit 92, document titled</p> <p>4 "Expert Report of Professor Albert N. Greco May</p> <p>5 3, 2012", marked for identification, as of this</p> <p>6 date.)</p> <p>7 A L B E R T N . G R E C O , called as a</p> <p>8 witness, having been duly sworn by a Notary</p> <p>9 Public, was examined and testified as follows:</p> <p>10 EXAMINATION BY</p> <p>11 MS. ZACK:</p> <p>12 Q. Good morning, Professor Greco.</p> <p>13 Could you just state your full name for</p> <p>14 the record, please.</p> <p>15 A. Sure. Albert N. Greco, G-r-e-c-o.</p> <p>16 Q. What is your current position?</p> <p>17 A. I am a professor of marketing, Fordham</p> <p>18 University, New York City, in the Schools of Business</p> <p>19 Administration.</p> <p>20 Q. You have been retained in this matter by</p> <p>21 Google as an expert?</p> <p>22 A. Yes.</p> <p>23 Q. When were you retained?</p> <p>24 A. Sometime in March of 2012. Perhaps the</p> <p>25 middle of the month. Somewhere in that time period.</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED, by</p> <p>3 and among counsel for the respective</p> <p>4 parties hereto, that the filing, sealing and</p> <p>5 certification of the within deposition shall be</p> <p>6 and the same are hereby waived;</p> <p>7 IT IS FURTHER STIPULATED AND AGREED</p> <p>8 that all objections, except as to the form of</p> <p>9 the question, shall be reserved to the time</p> <p>10 of the trial;</p> <p>11 IT IS FURTHER STIPULATED AND AGREED</p> <p>12 that the within deposition may be signed</p> <p>13 before any Notary Public with the same</p> <p>14 force and effect as if signed and sworn to</p> <p>15 before the Court.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 Greco</p> <p>2 Q. What is your area of expertise?</p> <p>3 A. I have done research on customs and</p> <p>4 practices in the book industry, also the scholarly</p> <p>5 journal business which is obviously not of any</p> <p>6 interest today.</p> <p>7 Q. When you say you have done research on the</p> <p>8 customs and practices in the book industry, what</p> <p>9 research are you speaking of?</p> <p>10 A. I am the author or editor of 12 scholarly</p> <p>11 books, most of which dealt with some aspect of the</p> <p>12 book publishing industry, including a book called</p> <p>13 "The Book Publishing Industry," another one called</p> <p>14 "The Culture and Commerce of Publishing in the 21st</p> <p>15 Century." A series of journal articles in a variety</p> <p>16 of journals here and in Europe on various aspects of</p> <p>17 the book publishing industry. Presentations at</p> <p>18 conferences.</p> <p>19 Q. Are there particular aspects of the book</p> <p>20 publishing industry that you focus on in your</p> <p>21 research?</p> <p>22 A. A great deal of the research is spent on</p> <p>23 sales, marketing, distribution. I look at the other</p> <p>24 areas of the industry, too.</p> <p>25 Q. Do you have any expertise in legal matters</p>

<p style="text-align: right;">Page 6</p> <p>1 Greco</p> <p>2 concerning the book publishing industry?</p> <p>3 A. I am not an attorney. I have written</p> <p>4 about contracts in various publications.</p> <p>5 Q. Do you consider yourself an expert on fair</p> <p>6 use?</p> <p>7 A. I am familiar with fair use.</p> <p>8 Q. But not an expert?</p> <p>9 A. I have never written extensively on fair</p> <p>10 use.</p> <p>11 Q. You have been an expert before, I take it?</p> <p>12 A. Yes.</p> <p>13 MR. McGOWAN: Let me just caution you to</p> <p>14 wait until Ms. Zack is finished speaking because</p> <p>15 it's important that you not speak over each</p> <p>16 other.</p> <p>17 THE WITNESS: Okay.</p> <p>18 Q. We have marked as PX 92 your expert</p> <p>19 report. You have that, right?</p> <p>20 A. Yes, I do.</p> <p>21 Q. If you look at what was marked as Exhibit</p> <p>22 B to your expert report which comes very near the</p> <p>23 end.</p> <p>24 A. Exhibit B, yes.</p> <p>25 Q. There is a list of, I think, four cases</p>	<p style="text-align: right;">Page 8</p> <p>1 Greco</p> <p>2 retained to discuss book marketing, book selling and</p> <p>3 book distribution in the United States.</p> <p>4 Q. You served as an expert for Feld, you</p> <p>5 said?</p> <p>6 A. Yes, Feld.</p> <p>7 Q. Is that a person or a publisher?</p> <p>8 A. Mr. Feld is a business executive.</p> <p>9 Q. Do you recall the claims against him?</p> <p>10 A. In terms of the book publishing industry,</p> <p>11 there were allegations that Pottker, who was and I</p> <p>12 still believe is an author, there were allegations</p> <p>13 that Mr. Feld tried to hurt her career as an author.</p> <p>14 Q. What was the nature of your expert</p> <p>15 opinion?</p> <p>16 A. Well, there was a confidentiality</p> <p>17 agreement. I was asked to look into book sales,</p> <p>18 marketing and book distribution during the period of</p> <p>19 time in which the allegations centered on.</p> <p>20 Q. Did this case have anything to do with</p> <p>21 eBooks?</p> <p>22 A. No.</p> <p>23 Q. Or digital marketing of books?</p> <p>24 A. I don't believe so.</p> <p>25 Q. Is there anything else you can tell me</p>
<p style="text-align: right;">Page 7</p> <p>1 Greco</p> <p>2 that you served as an expert in, is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. In the last five years or four years or is</p> <p>5 this all the ones you have --</p> <p>6 A. This is a complete list covering the</p> <p>7 period from 2008 to the present.</p> <p>8 Q. It's a complete list from 2008 to the</p> <p>9 present?</p> <p>10 A. Yes.</p> <p>11 Q. Prior to 2008, did you serve as an expert</p> <p>12 in any litigation matters?</p> <p>13 A. The first matter actually started, I</p> <p>14 believe, in 2007. It was settled in 2008.</p> <p>15 Q. Is that on this list?</p> <p>16 A. Yes, it is.</p> <p>17 Q. Which one is that?</p> <p>18 A. Number 1.</p> <p>19 Q. Which side did you serve as an expert for</p> <p>20 in that case number 1, Pottker versus Feld?</p> <p>21 A. Feld.</p> <p>22 Q. What type of case was that?</p> <p>23 MR. McGOWAN: Objection, vague. You may</p> <p>24 answer.</p> <p>25 A. It involved a variety of issues. I was</p>	<p style="text-align: right;">Page 9</p> <p>1 Greco</p> <p>2 about that case?</p> <p>3 A. It was settled, and I have no idea about</p> <p>4 the terms of the settlement.</p> <p>5 Q. Other than the settlement. I mean, under</p> <p>6 your confidentiality agreement as you understand it,</p> <p>7 is there any other matters that you can tell me about</p> <p>8 concerning your report?</p> <p>9 A. I analyzed sales data for a period of</p> <p>10 time, looked at marketing customs and trends during</p> <p>11 that period of time, talked about distribution of</p> <p>12 books into the channels of distribution during that</p> <p>13 time. It dealt really with those three areas.</p> <p>14 Q. But your report didn't deal with the eBook</p> <p>15 channel of distribution?</p> <p>16 A. No.</p> <p>17 Q. And it didn't deal with marketing online?</p> <p>18 A. No.</p> <p>19 Q. Did it deal with digital copying?</p> <p>20 A. I don't believe so.</p> <p>21 Q. The second case listed is Health</p> <p>22 Communications, Inc. versus Chicken Soup For the Soul</p> <p>23 Publishing.</p> <p>24 Who were you retained as expert for?</p> <p>25 A. Health Communications, Inc.</p>

<p style="text-align: right;">Page 10</p> <p>1 Greco</p> <p>2 Q. What line of business were they in?</p> <p>3 A. They are a book publisher publishing a</p> <p>4 variety of different kinds of books, often in</p> <p>5 inspirational, self-help psychology areas and other</p> <p>6 areas.</p> <p>7 Q. What was the nature of the claim in that</p> <p>8 litigation?</p> <p>9 A. Two authors had a long-term contract with</p> <p>10 Health Communications. The contract reached a</p> <p>11 termination point and the two authors left. As I was</p> <p>12 told, Health Communications had the legal authority</p> <p>13 to print and distribute backlist titles that were</p> <p>14 originally printed under the then terms and</p> <p>15 conditions of a contract.</p> <p>16 When the two authors left -- and they were</p> <p>17 the two primary editors of this book series called</p> <p>18 "Chicken Soup For the Soul." When they left and went</p> <p>19 to a new publisher, and they had every right to do</p> <p>20 that, the allegation was that material that had</p> <p>21 originally appeared in books published by Health</p> <p>22 Communications, Inc. was being used in new books</p> <p>23 published by a new publisher, and there was a request</p> <p>24 for an injunction to stop the sale of these new books</p> <p>25 that allegedly used material from</p>	<p style="text-align: right;">Page 12</p> <p>1 Greco</p> <p>2 THE WITNESS: I really don't know for</p> <p>3 sure.</p> <p>4 Q. In any event, you are not aware of a</p> <p>5 trial? You are not aware of any trial?</p> <p>6 A. No, I'm not.</p> <p>7 Q. And you didn't testify at a trial?</p> <p>8 A. There was a hearing before a judge.</p> <p>9 Q. You did testify at the injunction hearing?</p> <p>10 A. Yes.</p> <p>11 Q. That was in Connecticut?</p> <p>12 A. Yes.</p> <p>13 Q. Was an injunction granted?</p> <p>14 A. No.</p> <p>15 Q. Was there a confidentiality agreement in</p> <p>16 that case?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall more specifically what you</p> <p>19 testified about sales and marketing in that case?</p> <p>20 MR. MCGOWAN: Objection, asked and</p> <p>21 answered. You may answer.</p> <p>22 MS. ZACK: I said "more specifically."</p> <p>23 Q. You don't have to repeat what you already</p> <p>24 said.</p> <p>25 A. I was asked a series of questions</p>
<p style="text-align: right;">Page 11</p> <p>1 Greco</p> <p>2 previously-published books.</p> <p>3 Q. What was the nature of your opinion as an</p> <p>4 expert?</p> <p>5 A. I was asked to deal with the sales and</p> <p>6 marketing and distribution issues, customs,</p> <p>7 traditions, during the period in which the matter</p> <p>8 centered on.</p> <p>9 Q. Did that case have anything to do with</p> <p>10 eBooks?</p> <p>11 A. I don't believe it had anything to do with</p> <p>12 eBooks.</p> <p>13 Q. Did it have anything to do with digital</p> <p>14 marketing of books?</p> <p>15 A. Only in the sense that books by that point</p> <p>16 were available online, but that was not a major</p> <p>17 issue. It was very much a secondary issue in the</p> <p>18 matter.</p> <p>19 Q. And it says "Matter will go to trial."</p> <p>20 Did it ever go to trial?</p> <p>21 A. I don't know. I have a feeling the</p> <p>22 parties may have settled or perhaps the one party</p> <p>23 just dropped the suit.</p> <p>24 MR. MCGOWAN: I caution you not to guess.</p> <p>25 If you know or --</p>	<p style="text-align: right;">Page 13</p> <p>1 Greco</p> <p>2 regarding customs, practices, traditions in the</p> <p>3 selling of books, the marketing of books, the</p> <p>4 distribution of books, and a whole series of</p> <p>5 questions on those three topics.</p> <p>6 Q. You don't remember what questions there</p> <p>7 were, what you answered?</p> <p>8 A. Not really, in all candor.</p> <p>9 Q. Referring you to case number 3 on your</p> <p>10 list, the National Federation of the Blind versus the</p> <p>11 Arizona Board of Regents, who retained you as an</p> <p>12 expert?</p> <p>13 A. National Federation of the Blind.</p> <p>14 Q. What was the nature of the claims at issue</p> <p>15 in that case?</p> <p>16 A. The National Federation of the Blind had</p> <p>17 represented individuals that had vision impairment</p> <p>18 problems. Arizona State University had an honors</p> <p>19 program, which is very typical, and they were using</p> <p>20 an electronic handheld device, an eReader called the</p> <p>21 Kindle, and the National Federation of the Blind felt</p> <p>22 that individuals that had a vision problem could not</p> <p>23 use that device. It really centered on higher</p> <p>24 education college textbooks.</p> <p>25 Q. When you say "centered on," what do you</p>

4 (Pages 10 - 13)



<p style="text-align: right;">Page 14</p> <p>1 Greco</p> <p>2 mean?</p> <p>3 A. They asked me to discuss trends in higher</p> <p>4 education textbook publishing, sales, marketing,</p> <p>5 distribution.</p> <p>6 Q. What did you say about those areas?</p> <p>7 A. They asked specifically about the use of</p> <p>8 textbooks in colleges in the United States and in</p> <p>9 terms of the use of eReaders and the potential growth</p> <p>10 of eReaders in that market.</p> <p>11 Q. Anything else that you talked about?</p> <p>12 A. That was really the extent of it.</p> <p>13 Q. Did that case go to trial?</p> <p>14 A. No. The parties settled.</p> <p>15 Q. You said you testified in an injunction in</p> <p>16 case number 2, Health Communications, Inc.</p> <p>17 Did you ever testify at a deposition in</p> <p>18 the Pottker case?</p> <p>19 A. I gave depositions in the Pottker case.</p> <p>20 Q. And in the National Federation of the</p> <p>21 Blind case?</p> <p>22 A. Yes.</p> <p>23 Q. The fourth case is Illinois Computer</p> <p>24 Research versus Harpo Productions.</p> <p>25 Who retained you there?</p>	<p style="text-align: right;">Page 16</p> <p>1 Greco</p> <p>2 Q. You talked about historical or custom and</p> <p>3 practices as to book distributions of printed books?</p> <p>4 A. Of printed books and excerpts.</p> <p>5 Q. So what was your opinion?</p> <p>6 A. That there was a long tradition in the</p> <p>7 United States and a long tradition in the U.K. but</p> <p>8 specifically a long tradition in the United States</p> <p>9 about sales, marketing and distribution of printed</p> <p>10 books and the use of excerpts in the United States.</p> <p>11 Q. Excerpts for what purpose?</p> <p>12 A. Book excerpts.</p> <p>13 Q. Used for what purpose of book excerpts?</p> <p>14 A. Several different uses. One was</p> <p>15 marketing, and one centered on the fact that certain</p> <p>16 authors released books as excerpts over a period of</p> <p>17 time. In a sense in serials, magazines.</p> <p>18 Q. You are saying it was a custom and</p> <p>19 practice for authors to release portions of their</p> <p>20 books as excerpts in magazines over time as serials?</p> <p>21 A. Some authors did that going back to the</p> <p>22 mid 19th century in the United States.</p> <p>23 Q. What did you say about marketing?</p> <p>24 A. Specifically, you know, why excerpts were</p> <p>25 released. In some cases it was to market the entire</p>
<p style="text-align: right;">Page 15</p> <p>1 Greco</p> <p>2 A. Harpo Productions, Inc.</p> <p>3 Q. What is their line of business?</p> <p>4 A. It is a primarily but not -- it's</p> <p>5 primarily a television -- it's a company with</p> <p>6 television operations and a magazine. They may have</p> <p>7 other -- they have been involved in the motion</p> <p>8 picture industry also. They may have other</p> <p>9 businesses that I am not aware of.</p> <p>10 Q. What was the claim in that case or claims?</p> <p>11 A. It was a patent -- the allegations were</p> <p>12 that it was a patent infringement case involving</p> <p>13 books and book excerpts.</p> <p>14 Q. Patent infringement of book excerpts?</p> <p>15 A. Yes.</p> <p>16 Q. Was there a copyright claim, too?</p> <p>17 A. I don't believe there was any copyright</p> <p>18 claim in this matter.</p> <p>19 Q. What type of matters did you offer an</p> <p>20 expert opinion on for Harpo Productions?</p> <p>21 A. Book sales, book marketing, book</p> <p>22 distribution of printed books and excerpts in the</p> <p>23 United States back to approximately the middle of the</p> <p>24 19th century and some work on those issues in the</p> <p>25 United Kingdom back to the 19th century.</p>	<p style="text-align: right;">Page 17</p> <p>1 Greco</p> <p>2 book.</p> <p>3 Q. Why excerpts were released by whom?</p> <p>4 A. It included author Conan Doyle, James</p> <p>5 Michener and more than a dozen other authors. I</p> <p>6 can't remember all of them.</p> <p>7 Q. So you analyzed the circumstances under</p> <p>8 which those authors released excerpts for marketing</p> <p>9 purposes?</p> <p>10 A. Yes.</p> <p>11 Q. What did you conclude about that?</p> <p>12 A. That it was as very longstanding tradition</p> <p>13 in the United States and in the U.K. for some authors</p> <p>14 to release excerpts in order to generate interest in</p> <p>15 their writings and the ultimate publication of a book</p> <p>16 or the use of excerpts after a book had been</p> <p>17 published in order to generate interest in the sales</p> <p>18 of their book or books.</p> <p>19 Q. How is that relevant to the case, this</p> <p>20 Illinois Computer Research versus Harpo Productions</p> <p>21 case?</p> <p>22 MR. McGOWAN: Objection to the extent it</p> <p>23 calls for a legal conclusion. You may answer.</p> <p>24 Q. How is it pertinent to the case?</p> <p>25 A. The allegation from Illinois Computer</p>

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<p style="text-align: right;">Page 18</p> <p>1 Greco</p> <p>2 Research LLC was that they had a patent on the use of</p> <p>3 excerpts online.</p> <p>4 Q. They had a patent on the use of excerpts</p> <p>5 from certain books?</p> <p>6 A. I believe the allegation was for all</p> <p>7 content, not just books, but this matter that I was</p> <p>8 involved in centered only on books.</p> <p>9 Q. Illinois Computer Research was alleging it</p> <p>10 had a patent on the use of excerpts online from all</p> <p>11 books?</p> <p>12 A. I don't believe they said all books. They</p> <p>13 were dealing specifically with Harpo Productions,</p> <p>14 Inc.</p> <p>15 Q. So they said they had a patent on the use</p> <p>16 of excerpts from books that Harpo Productions, Inc.</p> <p>17 had an interest in?</p> <p>18 MR. McGOWAN: I am going to object.</p> <p>19 Q. Is that your understanding?</p> <p>20 MR. McGOWAN: I am going to object to the</p> <p>21 extent it calls for claim construction. It is a</p> <p>22 pending case. I think his testimony establishes</p> <p>23 the relevance. You may answer.</p> <p>24 Q. You can say you don't know if you don't</p> <p>25 know.</p>	<p style="text-align: right;">Page 20</p> <p>1 Greco</p> <p>2 Q. And now this one?</p> <p>3 A. Yes.</p> <p>4 MR. McGOWAN: Exhibit C.</p> <p>5 Q. If you look at the last page of PX 92</p> <p>6 which is Exhibit C, it's a list of materials</p> <p>7 considered.</p> <p>8 A. Yes.</p> <p>9 Q. Did you read all these materials that are</p> <p>10 listed cover-to-cover?</p> <p>11 A. Yes.</p> <p>12 Q. Most of them are not cited in your report,</p> <p>13 you would agree, correct?</p> <p>14 A. Correct.</p> <p>15 Q. What use did you make of these materials</p> <p>16 on this list?</p> <p>17 A. It provided background information about</p> <p>18 the matter between the Authors Guild and Google.</p> <p>19 Q. Before you were retained, did you have any</p> <p>20 awareness of this case?</p> <p>21 A. Yes.</p> <p>22 Q. You mention in your report, the body of</p> <p>23 your report, that you have a copyright interest in a</p> <p>24 book, is that right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 19</p> <p>1 Greco</p> <p>2 A. I don't know the full extent of their</p> <p>3 claim. I only was asked to discuss the Harpo</p> <p>4 Productions matter.</p> <p>5 Q. Did you give a deposition in that case?</p> <p>6 A. Yes.</p> <p>7 Q. Are you under a confidentiality agreement</p> <p>8 there?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know the disposition of that case?</p> <p>11 A. It was settled.</p> <p>12 Q. Have you ever served as an expert for</p> <p>13 Google in any matter?</p> <p>14 A. No.</p> <p>15 Q. Have you ever been retained previously by</p> <p>16 Google in any capacity?</p> <p>17 A. No.</p> <p>18 Q. Have you ever served as an expert for</p> <p>19 Durie Tangri in any matter?</p> <p>20 A. No.</p> <p>21 Q. For Keker Van Nest?</p> <p>22 A. No.</p> <p>23 Q. Is it the case that you served as an</p> <p>24 expert in only these four cases and that's it?</p> <p>25 A. Only those four cases.</p>	<p style="text-align: right;">Page 21</p> <p>1 Greco</p> <p>2 Q. Were you aware of this settlement that</p> <p>3 never was approved finally in this case?</p> <p>4 A. Yes.</p> <p>5 Q. Did you file a claim?</p> <p>6 A. No.</p> <p>7 Q. Did you object?</p> <p>8 A. No.</p> <p>9 Q. Have you talked to anyone at Google</p> <p>10 personally other than counsel about the matters that</p> <p>11 you were retained to be expert about?</p> <p>12 A. No.</p> <p>13 Q. Have you talked to anyone else about those</p> <p>14 matters?</p> <p>15 A. My wife is aware of this.</p> <p>16 Q. So you talked to your wife.</p> <p>17 I presume you talked to counsel at Durie</p> <p>18 Tangri?</p> <p>19 A. Yes.</p> <p>20 Q. Anyone else?</p> <p>21 A. No.</p> <p>22 Q. Did anyone assist you in writing your</p> <p>23 report?</p> <p>24 A. No.</p> <p>25 Q. Not even Durie Tangri?</p>

6 (Pages 18 - 21)

<p style="text-align: right;">Page 22</p> <p>1 Greco</p> <p>2 MR. McGOWAN: Objection, vague.</p> <p>3 Q. You can answer yes or no.</p> <p>4 A. No.</p> <p>5 Q. Have you ever written any articles about</p> <p>6 Google Books?</p> <p>7 A. No. I may have mentioned it, but I don't</p> <p>8 believe so.</p> <p>9 Q. Have you written any articles about Amazon</p> <p>10 Search Inside the Book?</p> <p>11 A. No, but I may have mentioned it.</p> <p>12 Q. Have you written articles about digital</p> <p>13 marketing?</p> <p>14 A. Articles, probably if it was -- not an</p> <p>15 article on digital marketing as such. It's possible</p> <p>16 it's been mentioned in a book or articles that I have</p> <p>17 done but I have never done an exclusive study on this</p> <p>18 matter.</p> <p>19 Q. And you never studied Google Books from a</p> <p>20 research point of view?</p> <p>21 MR. McGOWAN: Objection, vague. You may</p> <p>22 answer.</p> <p>23 A. I don't believe I have written anything</p> <p>24 specifically about Google Books except in passing.</p> <p>25 Q. What about anything about Google in</p>	<p style="text-align: right;">Page 24</p> <p>1 Greco</p> <p>2 foundation, vague. You may answer.</p> <p>3 A. I have never done anything specifically on</p> <p>4 Google.</p> <p>5 Q. You talk in your report about mergers and</p> <p>6 acquisitions, et cetera, in the publishing industry,</p> <p>7 is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. Is that something you studied?</p> <p>10 A. Yes.</p> <p>11 Q. What is the purpose of those studies?</p> <p>12 MR. McGOWAN: Objection. Compound, vague.</p> <p>13 You may answer.</p> <p>14 A. Scholars are interested in what has</p> <p>15 happened in various industries and sectors. I</p> <p>16 happened to study this sector in this industry.</p> <p>17 There have been a series of mergers and acquisitions</p> <p>18 in this industry in the United States going back into</p> <p>19 the 19th century. I thought it was an interesting</p> <p>20 topic. Not a lot of scholars have addressed the</p> <p>21 issue. I did a series of studies on it.</p> <p>22 Q. Did you compare the rate of mergers and</p> <p>23 acquisitions in the publishing industry to the rate</p> <p>24 of mergers and acquisitions in other industries?</p> <p>25 A. If I did, only in passing.</p>
<p style="text-align: right;">Page 23</p> <p>1 Greco</p> <p>2 general, have you written any articles about Google</p> <p>3 general business?</p> <p>4 A. No article specifically on Google.</p> <p>5 Q. Articles about search engines?</p> <p>6 A. No article specifically about search</p> <p>7 engines.</p> <p>8 Q. Have you studied or written articles about</p> <p>9 digital copying?</p> <p>10 A. No article specifically on that topic.</p> <p>11 Q. Generally?</p> <p>12 A. In general terms I have mentioned it in</p> <p>13 various publications because it's significant.</p> <p>14 Q. Have you written any articles about</p> <p>15 libraries engaging in digital copying of any type?</p> <p>16 A. Nothing specifically on that topic.</p> <p>17 Q. How about libraries setting up or engaging</p> <p>18 in their own search engines?</p> <p>19 MR. McGOWAN: Objection, vague. You may</p> <p>20 answer.</p> <p>21 A. I have looked at libraries in very general</p> <p>22 terms. So, not really.</p> <p>23 Q. Have you ever studied Google's market</p> <p>24 power?</p> <p>25 MR. McGOWAN: Objection. Lacks</p>	<p style="text-align: right;">Page 25</p> <p>1 Greco</p> <p>2 Q. Referring you back to the first page of</p> <p>3 the body of your report which is PX 92.</p> <p>4 A. Yes.</p> <p>5 Q. Paragraph 2 says "I have been asked to</p> <p>6 describe the following:", and then subparagraph A</p> <p>7 says "Characteristics and practices in the book</p> <p>8 industry, such as mergers, acquisitions, and</p> <p>9 reversions, that affect one's ability to locate</p> <p>10 rights holders for books."</p> <p>11 You were asked by Google to talk about</p> <p>12 that in your report?</p> <p>13 A. Yes.</p> <p>14 Q. Had you previously written about that</p> <p>15 subject in particular, the effect of mergers,</p> <p>16 acquisitions and reversions on the ability to locate</p> <p>17 rights holders for books?</p> <p>18 A. Not in terms of the last part of the</p> <p>19 sentence "to locate rights holders for books."</p> <p>20 Q. You have published no articles about how</p> <p>21 the mergers, acquisitions and reversions have</p> <p>22 historically affected one's ability to locate rights</p> <p>23 holders for books?</p> <p>24 A. If I did, it was in passing.</p> <p>25 Q. Do you recall doing that?</p>

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<p style="text-align: right;">Page 26</p> <p>1 Greco</p> <p>2 A. I have worked on 12 books, 20 articles, 10</p> <p>3 professional books. It's certainly possible</p> <p>4 somewhere I referred to that, off the top of my head.</p> <p>5 I would have to go back and look, in all candor. I</p> <p>6 may have.</p> <p>7 Q. You don't cite any articles of that</p> <p>8 nature?</p> <p>9 A. No.</p> <p>10 Q. Have you ever engaged in a study whose</p> <p>11 object was an attempt to locate rights holders for</p> <p>12 books?</p> <p>13 A. I have never done such a study on that</p> <p>14 topic.</p> <p>15 Q. Have you asked others to do it for you?</p> <p>16 A. No.</p> <p>17 Q. Have you researched studies, if any, by</p> <p>18 others on that topic?</p> <p>19 A. I believe there have been some articles on</p> <p>20 those issues in a variety of publications that I</p> <p>21 almost certainly read and may have even cited</p> <p>22 somewhere along the line.</p> <p>23 Q. But you didn't cite them in your report?</p> <p>24 A. No.</p> <p>25 Q. Have you ever attempted to locate a rights</p>	<p style="text-align: right;">Page 28</p> <p>1 Greco</p> <p>2 books back in print, and I gave him some suggestions</p> <p>3 for titles, and the matter seemed to die.</p> <p>4 Q. Other than passing on the suggestion, did</p> <p>5 you do anything there to attempt to locate anyone?</p> <p>6 A. Not really.</p> <p>7 Q. Anything else; any other times that you</p> <p>8 attempted to locate a rights holder for a book?</p> <p>9 A. Not that I can remember.</p> <p>10 Q. 2 B says "The benefits to authors of</p> <p>11 making it easy for potential readers to find their</p> <p>12 books."</p> <p>13 That was something that Google asked you</p> <p>14 to opine about?</p> <p>15 A. Yes.</p> <p>16 Q. Have you previously written on that</p> <p>17 subject?</p> <p>18 A. I have written about new title output, the</p> <p>19 number of backless books, books in print, and about</p> <p>20 what is often called in the marketing literature</p> <p>21 "clutter in the marketplace."</p> <p>22 Q. In connection with any of those writings,</p> <p>23 did you write about the benefits to authors of making</p> <p>24 it easy for potential readers to find their books?</p> <p>25 A. I wrote about the problem authors face in</p>
<p style="text-align: right;">Page 27</p> <p>1 Greco</p> <p>2 holder for a book?</p> <p>3 A. Yes.</p> <p>4 Q. In what context?</p> <p>5 A. A colleague named John Tebbel wrote what I</p> <p>6 believe was the definitive four-volume history of the</p> <p>7 book publishing industry in the United States. The</p> <p>8 book was published by a company that, if I remember</p> <p>9 correctly, put the books out of print, out of stock,</p> <p>10 and the company no longer did books.</p> <p>11 I was in discussions with a university</p> <p>12 press director about possibly bringing those four</p> <p>13 books back into print. The author died, and I could</p> <p>14 not find out who held the rights, whether his estate</p> <p>15 or the initial publisher, and we dropped the matter.</p> <p>16 Q. When you say you couldn't find out, what</p> <p>17 did you do to attempt to find out?</p> <p>18 A. I believe I tried to reach out to people</p> <p>19 in Bowker, the original publisher, but they no longer</p> <p>20 were doing books. They had sold certain operations</p> <p>21 to another company and, unfortunately, John Tebbel</p> <p>22 passed on, and we just dropped the matter.</p> <p>23 Q. Any other times other than that time?</p> <p>24 A. Yes. I was talking to a series editor --</p> <p>25 a book series editor who was trying to bring older</p>	<p style="text-align: right;">Page 29</p> <p>1 Greco</p> <p>2 getting publicity for books in a business environment</p> <p>3 where there is a very large number of new titles</p> <p>4 published every hour of the day.</p> <p>5 Q. Anything else on that subject?</p> <p>6 A. I would have to go back and reread the</p> <p>7 various things that I wrote about.</p> <p>8 Q. Have you ever written about the question</p> <p>9 of whether the Internet allows authors to get more</p> <p>10 noticed through their own websites?</p> <p>11 A. I probably have certainly mentioned that</p> <p>12 in some of the publications that I worked on, yes.</p> <p>13 Q. What about publisher websites?</p> <p>14 A. I believe I have written about publisher</p> <p>15 websites as a marketing tool.</p> <p>16 Q. And you have written about author websites</p> <p>17 as a marketing tool?</p> <p>18 A. I am sure I have. If you write about</p> <p>19 marketing books, these are very typical topics that</p> <p>20 you would at least mention.</p> <p>21 Q. Are there any other digital tools aside</p> <p>22 from search engines that you have written about with</p> <p>23 respect to marketing books?</p> <p>24 MR. McGOWAN: Objection, vague. You may</p> <p>25 answer.</p>

<p style="text-align: right;">Page 30</p> <p>1 Greco</p> <p>2 A. I have probably written about blogs and</p> <p>3 other digital sites that discuss books, analyze</p> <p>4 books, talk about books or authors. Those have grown</p> <p>5 in popularity in the last few years.</p> <p>6 Q. 2 C says "Industry custom and practice</p> <p>7 pertaining to the sales and marketing of books, and</p> <p>8 in particular to the practice of allowing potential</p> <p>9 buyers to search within books."</p> <p>10 A. Yes.</p> <p>11 Q. Google asked you to opine about that?</p> <p>12 A. I have written a lot about the sales and</p> <p>13 marketing of books. This is the first time I have</p> <p>14 put ink on paper dealing with "allowing potential</p> <p>15 buyers to search within books."</p> <p>16 Q. The second portion of 2 C which says "and</p> <p>17 in particular to the practice of allowing potential</p> <p>18 buyers to search within books," you haven't written</p> <p>19 about that before?</p> <p>20 A. If so, only in passing.</p> <p>21 Q. Have you discussed that particular</p> <p>22 practice with publishers?</p> <p>23 A. I have discussed it with individuals in</p> <p>24 the book publishing industry in the United States.</p> <p>25 Q. Have you discussed it with authors?</p>	<p style="text-align: right;">Page 32</p> <p>1 Greco</p> <p>2 I couldn't say for sure whether they were the very</p> <p>3 first one.</p> <p>4 Q. Who else do you understand to be engaged</p> <p>5 in this practice other than Amazon.com?</p> <p>6 MR. McGOWAN: Objection, vague. You may</p> <p>7 answer.</p> <p>8 A. Barnes&amp;Noble.com, companies that are</p> <p>9 involved in selling new or backless books online, and</p> <p>10 that list would be, I would assume, dozens of various</p> <p>11 companies.</p> <p>12 Q. Can you give me an example of one such</p> <p>13 company?</p> <p>14 A. In addition to Amazon.com or</p> <p>15 Barnes&amp;Noble.com?</p> <p>16 Q. Yes.</p> <p>17 A. Google. I assume Apple. I am sure there</p> <p>18 are many, many others.</p> <p>19 Q. Have you, yourself, searched inside a book</p> <p>20 at Amazon?</p> <p>21 A. Yes.</p> <p>22 Q. What have you done with respect to Barnes</p> <p>23 &amp; Noble?</p> <p>24 MR. McGOWAN: Objection, vague. You may</p> <p>25 answer.</p>
<p style="text-align: right;">Page 31</p> <p>1 Greco</p> <p>2 A. I have had discussions with authors.</p> <p>3 Q. Who have you discussed it with? Which</p> <p>4 individuals in the book publishing industry have you</p> <p>5 discussed that topic with?</p> <p>6 A. From 1985 to the present, I have talked to</p> <p>7 a sizeable number of people in this industry.</p> <p>8 Q. Let me stop you there.</p> <p>9 I mean, this particular practice didn't</p> <p>10 start in 1987, right?</p> <p>11 A. Right.</p> <p>12 Q. We are talking more recent conversations</p> <p>13 you would have had, correct?</p> <p>14 A. Yes.</p> <p>15 Q. What I am asking you is, since this</p> <p>16 practice developed, allowing potential buyers to</p> <p>17 search within books, do you know when the practice</p> <p>18 first developed online?</p> <p>19 A. I couldn't give you a month or a year</p> <p>20 without going back and looking at some documents. I</p> <p>21 would assume it was sometime after August 1995.</p> <p>22 Q. Do you know who first developed a tool</p> <p>23 online that allowed potential buyers to search within</p> <p>24 books?</p> <p>25 A. I believe Amazon.com was involved in this.</p>	<p style="text-align: right;">Page 33</p> <p>1 Greco</p> <p>2 Q. With respect to this practice of allowing</p> <p>3 potential buyers to search within books.</p> <p>4 A. I have used the Barnes&amp;Noble.com website</p> <p>5 and other websites doing various research projects.</p> <p>6 Q. Do you know whether or not the books that</p> <p>7 you can search through at Amazon.com are there by</p> <p>8 permission of the author or publisher?</p> <p>9 MR. McGOWAN: Objection, vague. You may</p> <p>10 answer.</p> <p>11 A. I would have to assume yes.</p> <p>12 Q. Why do you say that?</p> <p>13 A. Amazon.com is a well-known company, and I</p> <p>14 couldn't list all the various books or book</p> <p>15 publishers, but let's assume it's HarperCollins, any</p> <p>16 of those major publishers, any of the major</p> <p>17 university presses, I would assume that they will</p> <p>18 have a contract stipulating what can and cannot be</p> <p>19 posted on Amazon.com, Barnes&amp;Noble.com, et cetera.</p> <p>20 Q. What about Google?</p> <p>21 MR. McGOWAN: Objection, vague.</p> <p>22 Q. Do you assume that --</p> <p>23 A. I would have to assume. I have not read</p> <p>24 any contracts between a publisher and/or an online</p> <p>25 site. I would assume there has to be a contract</p>



<p style="text-align: right;">Page 34</p> <p>1 Greco</p> <p>2 stipulating terms and conditions.</p> <p>3 MR. McGOWAN: I will caution the witness</p> <p>4 not to assume as opposed to testifying as to</p> <p>5 knowledge.</p> <p>6 THE WITNESS: Okay.</p> <p>7 Q. Did you have that assumption when you</p> <p>8 wrote your report?</p> <p>9 A. Yes.</p> <p>10 Q. Just to be clear, when you wrote your</p> <p>11 report which is PX 92, you assumed that all of the</p> <p>12 excerpts that show up in Google Books are shown by</p> <p>13 permission of the publisher or author?</p> <p>14 A. I assume that's correct.</p> <p>15 Q. Referring you to paragraph 3 which says</p> <p>16 "In brief, my opinion on these topics is as follows:</p> <p>17 Given the many factors that make it difficult to</p> <p>18 trace rights holders, it would be infeasible to clear</p> <p>19 rights for any comprehensive attempt to digitize</p> <p>20 books, such as the 20 million plus books in Google</p> <p>21 Books."</p> <p>22 A. That's what I wrote, yes.</p> <p>23 Q. When you say "infeasible," what do you</p> <p>24 mean?</p> <p>25 A. When you look at new title output and when</p>	<p style="text-align: right;">Page 36</p> <p>1 Greco</p> <p>2 MR. McGOWAN: Objection. Vague, lacks</p> <p>3 foundation. You may answer.</p> <p>4 A. I do not remember what the percentage was</p> <p>5 of the 20 million that were or were not in public</p> <p>6 domain.</p> <p>7 Q. 3 B says "Custom and practice in the book</p> <p>8 industry recognize that it is both difficult for</p> <p>9 authors to have their works discovered by potential</p> <p>10 readers and important for authors to make it easy for</p> <p>11 readers to find their works." Then it says "Search</p> <p>12 tools such as Google Books, which make it easier for</p> <p>13 authors to be found, benefit rather than harm</p> <p>14 authors."</p> <p>15 A. Correct.</p> <p>16 Q. Is it your opinion that any marketing tool</p> <p>17 that makes it easier for authors to be found benefits</p> <p>18 rather than harms authors?</p> <p>19 MR. McGOWAN: Objection, vague. You may</p> <p>20 answer.</p> <p>21 A. In light of the new title output in the</p> <p>22 last eight to ten years, it is amazingly difficult</p> <p>23 for any author aside from what you would call a star</p> <p>24 author to have his or her books marketed effectively.</p> <p>25 Q. Is it your opinion that any tool that</p>
<p style="text-align: right;">Page 35</p> <p>1 Greco</p> <p>2 you look at backless books in print, you are dealing</p> <p>3 with a very, very large number of titles. Some of</p> <p>4 those titles would be relatively easy to find who is</p> <p>5 the rights holder.</p> <p>6 Looking at this industry, it would be</p> <p>7 difficult to find certain rights holders.</p> <p>8 Q. Do you draw any further conclusions from</p> <p>9 that?</p> <p>10 A. 20 million plus books probably had well</p> <p>11 more than 20 million authors because many books have</p> <p>12 coauthors.</p> <p>13 Q. You said you read Dan Clancy's deposition,</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. In his deposition he explained that these</p> <p>17 20 million books include public domain books?</p> <p>18 A. That's my understanding.</p> <p>19 Q. Is it your understanding that it's not</p> <p>20 necessary to clear rights for public domain books?</p> <p>21 A. As I understand it, if a book is in public</p> <p>22 domain, anyone can publish it.</p> <p>23 Q. A substantial portion of the 20 million</p> <p>24 books are in the public domain and don't require</p> <p>25 rights clearance, right?</p>	<p style="text-align: right;">Page 37</p> <p>1 Greco</p> <p>2 helps authors market their books is a good thing?</p> <p>3 MR. McGOWAN: Objection, vague. Asked and</p> <p>4 answered. You may answer.</p> <p>5 A. I believe anything that helps market a</p> <p>6 book helps theoretically sell the book, and that</p> <p>7 ultimately helps the author.</p> <p>8 Q. Do you believe that marketing without</p> <p>9 permission of a publisher and author is a good thing?</p> <p>10 MR. McGOWAN: Objection, vague. You may</p> <p>11 answer.</p> <p>12 A. That requires a legal conclusion. I am</p> <p>13 not an attorney.</p> <p>14 MR. McGOWAN: We have been going about an</p> <p>15 hour. When you get a chance to change</p> <p>16 direction, I would like to take a break.</p> <p>17 MS. ZACK: I just want to get through this</p> <p>18 one paragraph.</p> <p>19 Q. 3 C, it says "Authors are paid for sales,</p> <p>20 not searches. Both as matter of industry custom and</p> <p>21 practice, and in my own personal experience, authors</p> <p>22 do not receive royalties in return for allowing their</p> <p>23 works to be searched."</p> <p>24 What do you mean by that?</p> <p>25 A. The first sentence in 3 C, an author is</p>

10 (Pages 34 - 37)

<p style="text-align: right;">Page 38</p> <p>1 Greco</p> <p>2 paid when -- an author would receive some sort of a</p> <p>3 royalty payment when a book is sold. I have seen</p> <p>4 nothing in the literature or I have heard nothing</p> <p>5 from individuals that I have talked to that authors</p> <p>6 are paid anything for a search.</p> <p>7 As for the second sentence, including my</p> <p>8 own personal experiences, authors do not receive a</p> <p>9 royalty in return for allowing their works to be</p> <p>10 searched. They receive a royalty based on the terms</p> <p>11 and conditions of whatever the contract stipulates</p> <p>12 for sales, not searches.</p> <p>13 The third part of the third sentence,</p> <p>14 search benefits authors in the sense that if you are</p> <p>15 looking for a book on the French Revolution, you</p> <p>16 would have to do a search in order to perhaps find</p> <p>17 that book. So if the search leads to someone finding</p> <p>18 the book and possibly buying the book, then that can</p> <p>19 lead to, depending on the terms and conditions of the</p> <p>20 contract, a royalty payment.</p> <p>21 I have no reason to believe that authors</p> <p>22 are paid for "the development of things that help</p> <p>23 them sell books."</p> <p>24 Q. When you say you have no reason to</p> <p>25 believe, that means because you have never seen it</p>	<p style="text-align: right;">Page 40</p> <p>1 Greco</p> <p>2 MR. McGOWAN: Yes.</p> <p>3 (Recess.)</p> <p>4 Q. Turning to page 2, Professor Greco, of</p> <p>5 your report.</p> <p>6 A. Yes.</p> <p>7 Q. Paragraph 4, did you write that yourself?</p> <p>8 A. Yes, based on --</p> <p>9 Q. That is based on the materials --</p> <p>10 A. From Clancy.</p> <p>11 Q. -- provided by Google; primarily</p> <p>12 Mr. Clancy's declaration?</p> <p>13 A. Yes, I read through the declaration.</p> <p>14 That's where the stats came from.</p> <p>15 Q. In paragraph 5 you mention that your book</p> <p>16 called "The Book Publishing Industry" is in the</p> <p>17 Google partner program, is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Who is the publisher of that book?</p> <p>20 A. The publisher is Erl Baum, but Erl Baum</p> <p>21 was sold to Informer Plc, a British company, which in</p> <p>22 the United States is known as Taylor, Francis &amp;</p> <p>23 Routledge. At this minute, the official publisher is</p> <p>24 Taylor, Francis &amp; Routledge, even though an older</p> <p>25 name appears on the spine.</p>
<p style="text-align: right;">Page 39</p> <p>1 Greco</p> <p>2 happen?</p> <p>3 A. As far as I know, the industry custom and</p> <p>4 practice is that if an author gets involved in</p> <p>5 marketing his or her book, a publisher -- it depends</p> <p>6 on the nature of the publisher and the author and the</p> <p>7 book. If you are talking about a big trade book, a</p> <p>8 big trade publisher, the general practice is that an</p> <p>9 author who might do a five or ten-city hype tour, go</p> <p>10 out and perhaps read from your book, perhaps sign</p> <p>11 books, the custom and practice in the industry is</p> <p>12 that the publisher pays for all costs related to</p> <p>13 taking that individual from New York to Chicago, et</p> <p>14 cetera, et cetera, but the author is not paid for his</p> <p>15 or her time. They would cover airfare, room and</p> <p>16 board, cab fare, et cetera, et cetera.</p> <p>17 So that is my understanding of the</p> <p>18 industry practice in terms of big trade books and big</p> <p>19 trade publishers. If you are talking about small</p> <p>20 publishers and especially university presses, I think</p> <p>21 it's fair to say that university presses are happy if</p> <p>22 an author goes out on a tour, but they rarely pay for</p> <p>23 those costs.</p> <p>24 MS. ZACK: Okay. Do you want to take a</p> <p>25 break?</p>	<p style="text-align: right;">Page 41</p> <p>1 Greco</p> <p>2 Q. How is your book, the book publishing</p> <p>3 industry, in the partner program? Is that by</p> <p>4 permission of your publisher?</p> <p>5 A. It's my understanding that the 45,000</p> <p>6 publishers, including the publisher that I deal with,</p> <p>7 has an agreement with Google, unlike the library</p> <p>8 program.</p> <p>9 Q. I'm not asking about all those other</p> <p>10 books, I am asking about your book.</p> <p>11 A. How did it end up in the program?</p> <p>12 Q. Yes.</p> <p>13 A. I was never even informed. It was just</p> <p>14 done between in this case Taylor &amp; Francis, as one of</p> <p>15 the 45,000 publishers involved in the partner</p> <p>16 program.</p> <p>17 Q. Do you know how much of your book is being</p> <p>18 displayed in the partner program?</p> <p>19 A. Perhaps a chapter or large portions of a</p> <p>20 chapter. I have never really measured it.</p> <p>21 Q. Do you get royalties from that book?</p> <p>22 A. Yes.</p> <p>23 Q. Was that a work for hire or is the</p> <p>24 copyright in your name?</p> <p>25 A. I wrote the original book --</p>

11 (Pages 38 - 41)

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<p style="text-align: right;">Page 42</p> <p>1 Greco</p> <p>2 MR. McGOWAN: Objection to the extent that</p> <p>3 that's not the legal universe. It calls for a</p> <p>4 legal conclusion. You may answer.</p> <p>5 MS. ZACK: Let me withdraw it.</p> <p>6 Q. Is the copyright to that book in your</p> <p>7 name?</p> <p>8 A. No.</p> <p>9 Q. Whose name is it in?</p> <p>10 A. Either Informer Plc, Taylor &amp; Francis or</p> <p>11 Routledge. However they are structured in the United</p> <p>12 States.</p> <p>13 Q. So it's in the publisher's name?</p> <p>14 A. It's in the publisher's name.</p> <p>15 Q. You said you are not quite sure how much</p> <p>16 of your book is displayed in the partner program; you</p> <p>17 think it's perhaps a chapter?</p> <p>18 A. It's perhaps a chapter or very close to a</p> <p>19 chapter.</p> <p>20 Q. Are you aware that in the partner program</p> <p>21 Google shares ad revenues with its partners?</p> <p>22 MR. McGOWAN: Objection. Lacks</p> <p>23 foundation, compound. You may answer.</p> <p>24 A. I have a very vague understanding of that.</p> <p>25 Q. When you say a "vague understanding," do</p>	<p style="text-align: right;">Page 44</p> <p>1 Greco</p> <p>2 Q. Are any of those other books included in</p> <p>3 Google Books?</p> <p>4 A. I believe "The Culture and Commerce of</p> <p>5 Book Publishing in the 21st Century" is included. I</p> <p>6 don't know about the others.</p> <p>7 Q. Who is the publisher of that book?</p> <p>8 A. Stanford University Press.</p> <p>9 Q. Do you know how "The Culture and Commerce</p> <p>10 of Book Publishing in the 21st Century," how that</p> <p>11 book came to be in Google Books?</p> <p>12 A. I believe it's part of the publisher</p> <p>13 program but I have never discussed it with anyone at</p> <p>14 Stanford.</p> <p>15 Q. For that particular book, in whose name is</p> <p>16 the copyright?</p> <p>17 A. Stanford University Press.</p> <p>18 Q. Let me show you what was previously marked</p> <p>19 as PX 91. "Google Books Partner Program Standard</p> <p>20 Terms and Conditions."</p> <p>21 Have you ever seen this before?</p> <p>22 A. No.</p> <p>23 Q. Referring you to the second page where it</p> <p>24 says "Ad Payment."</p> <p>25 A. Item 8?</p>
<p style="text-align: right;">Page 43</p> <p>1 Greco</p> <p>2 you understand at all what the relationship is there?</p> <p>3 A. No. I understand there is some sort of a</p> <p>4 sharing, but I have no idea about it and have never</p> <p>5 received any royalty from it, at least to the best of</p> <p>6 my knowledge.</p> <p>7 Q. Over the last few years, have you received</p> <p>8 royalty payments for your book?</p> <p>9 A. For that book, yes.</p> <p>10 Q. When you say "for that book," you have</p> <p>11 other books that you receive royalty payments for?</p> <p>12 A. Yes.</p> <p>13 Q. How many others?</p> <p>14 A. Could I look at the list?</p> <p>15 MS. ZACK: Sure.</p> <p>16 (Witness reviewed document.)</p> <p>17 A. I receive a royalty payment from the book</p> <p>18 publishing industry for a book called "The Culture</p> <p>19 and Commerce of Book Publishing in the 21st Century";</p> <p>20 for a book called "Access For All: Closing the Book</p> <p>21 Gap For Children in Early Education"; for a book</p> <p>22 called "The Media and Entertainment Industries"; and</p> <p>23 three books were translated into Chinese where I</p> <p>24 received a payment, and that took place, and I</p> <p>25 believe that's all.</p>	<p style="text-align: right;">Page 45</p> <p>1 Greco</p> <p>2 Q. Yes.</p> <p>3 A. I see item 8.</p> <p>4 Q. This talks about the payment and sharing</p> <p>5 of ad revenues between Google and the partner.</p> <p>6 You are not familiar with that?</p> <p>7 MR. McGOWAN: Objection, vague. You may</p> <p>8 answer.</p> <p>9 A. I'm not familiar with this document or any</p> <p>10 of the items in the document.</p> <p>11 Q. Are you aware that Google scans books that</p> <p>12 it receives from libraries; digitally scans books</p> <p>13 that it gets from libraries?</p> <p>14 A. Yes.</p> <p>15 Q. Have you talked to any libraries that</p> <p>16 participate in that scanning project?</p> <p>17 MR. McGOWAN: Objection. Vague as it's</p> <p>18 phrased. It might be useful to narrow that one.</p> <p>19 Q. Do you understand the question?</p> <p>20 A. I don't believe I have ever talked to a</p> <p>21 librarian about that program. I have talked to</p> <p>22 librarians but I don't believe about that program.</p> <p>23 Q. Other than what you read in the materials</p> <p>24 that you listed on Exhibit C to your report, is it</p> <p>25 fair to say you don't have any information about the</p>

12 (Pages 42 - 45)

<p style="text-align: right;">Page 46</p> <p>1 Greco</p> <p>2 library scanning project that Google was engaged in?</p> <p>3 A. I have read articles over the years in</p> <p>4 Publishers Weekly about the program.</p> <p>5 Q. Anything else?</p> <p>6 A. It's possible it's been covered in the New</p> <p>7 York Times or the Wall Street Journal. I couldn't</p> <p>8 say definitively at this point. I think it's fair to</p> <p>9 say I remember reading in Publishers Weekly, possibly</p> <p>10 in any of the book industry daily blogs.</p> <p>11 Q. Any other source of information about</p> <p>12 that?</p> <p>13 A. I can't remember any other source.</p> <p>14 Q. There was a deposition in this case taken</p> <p>15 of Paul Courant of the University of Michigan.</p> <p>16 Did you read that?</p> <p>17 A. Which number is that, please?</p> <p>18 Q. It's not on your list.</p> <p>19 A. These are the only documents.</p> <p>20 Q. So you didn't read that, Mr. Courant's</p> <p>21 deposition?</p> <p>22 A. No, these are the only documents that I</p> <p>23 read through.</p> <p>24 Q. Referring to page 3 of your report,</p> <p>25 paragraph 7.</p>	<p style="text-align: right;">Page 48</p> <p>1 Greco</p> <p>2 report says "That 45,000 publishers participate in</p> <p>3 Google's Partner program indicates that the Commerce</p> <p>4 Department data reveal just the tip of the iceberg."</p> <p>5 Are you aware that those 45,000 publishers</p> <p>6 include publishers not in the U.S.?</p> <p>7 A. I have never seen a master list of the</p> <p>8 45,000 publishers. To be tracked by the Department</p> <p>9 of Commerce, as I understand it, a company has to</p> <p>10 have a federal ID number, at least one paid employee,</p> <p>11 and its primary business has to be in publishing.</p> <p>12 Q. Right. Now I am asking you whether you</p> <p>13 are aware that the 45,000 publishers that participate</p> <p>14 in the Google's partner program include foreign</p> <p>15 publishers?</p> <p>16 A. I have no knowledge about who is in that</p> <p>17 45,000 database.</p> <p>18 Q. Are you aware that the 20 million books in</p> <p>19 Dan Clancy's declaration includes books published</p> <p>20 outside the United States?</p> <p>21 A. That's my recollection. I would have to</p> <p>22 reread Clancy to verify that.</p> <p>23 Q. I am handing you PX 1. PX 1 that I have</p> <p>24 handed to you, Professor Greco, is the Declaration of</p> <p>25 Daniel Clancy in Support of Google Inc.'s Opposition</p>
<p style="text-align: right;">Page 47</p> <p>1 Greco</p> <p>2 A. I see it.</p> <p>3 Q. The second line, there's a sentence that</p> <p>4 starts "The Commerce Department, for example, tracks</p> <p>5 slightly more than 3,000 publishing firms."</p> <p>6 Are you referring to the United States</p> <p>7 Department of Commerce?</p> <p>8 A. Yes. It's cited in footnote 10.</p> <p>9 Q. When you say "3,000 publishing firms," are</p> <p>10 those U.S. publishing firms?</p> <p>11 A. As far as I know, these are publishing</p> <p>12 firms in the United States. They could possibly be</p> <p>13 owned by foreign entities. These are publishing</p> <p>14 firms operating in the United States.</p> <p>15 Q. In that sentence where you say "tracks,"</p> <p>16 what do you mean by "tracks"?</p> <p>17 A. There's a federal law that in years ending</p> <p>18 in '2 and '7, publishers have to submit confidential</p> <p>19 information to the U.S. Department of Commerce. The</p> <p>20 Department of Commerce collects, aggregates and</p> <p>21 releases aggregated data about the book industry in</p> <p>22 the United States. They have indicated that</p> <p>23 approximately 3,000 firms participate in those</p> <p>24 surveys that are done every five years.</p> <p>25 Q. The next sentence of paragraph 7 of your</p>	<p style="text-align: right;">Page 49</p> <p>1 Greco</p> <p>2 to Plaintiffs' Motion For Class Certification.</p> <p>3 A. Yes, I see it.</p> <p>4 Q. Referring to paragraph 4 which says</p> <p>5 "Google has scanned more than 20 million books as</p> <p>6 part of Google Books"; do you see that?</p> <p>7 A. Yes, I do.</p> <p>8 Q. Then it says "Users of Google Books can</p> <p>9 see search results that include snippets of text in</p> <p>10 English for more than 4 million of these books."</p> <p>11 Do you see that?</p> <p>12 A. I see that.</p> <p>13 Q. Are you offering any opinions in this case</p> <p>14 about whether or not it's infeasible to locate the</p> <p>15 rights holders of 4 million books that are subject to</p> <p>16 U.S. copyright?</p> <p>17 A. I believe a search of that size would be</p> <p>18 in many ways difficult.</p> <p>19 Q. For the same reasons you previously</p> <p>20 testified?</p> <p>21 A. Yes, because you may or may not be dealing</p> <p>22 with 4 million authors, you may be dealing with more</p> <p>23 than 4 million authors; coauthors.</p> <p>24 Q. Referring you to the next page of your</p> <p>25 report, page 4.</p>

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<p style="text-align: right;">Page 50</p> <p>1 Greco</p> <p>2 A. I see it.</p> <p>3 Q. This says in paragraph 9 "I have signed 12</p> <p>4 book contracts and have obtained reversions of the</p> <p>5 rights in my own books."</p> <p>6 So you have reverted rights to 12 books,</p> <p>7 is that right?</p> <p>8 A. No. I have signed 12 contracts, and in a</p> <p>9 few instances I asked for the copyright back when the</p> <p>10 book was declared out of print.</p> <p>11 Q. How many books have reverted back to you?</p> <p>12 A. Can I look?</p> <p>13 MS. ZACK: Oh, sure.</p> <p>14 (Witness reviewed document.)</p> <p>15 A. The first edition of "The Book Publishing</p> <p>16 Industry" was originally signed with Simon &amp;</p> <p>17 Schuster. They sold it to Penguin Plc. They</p> <p>18 declared it out of print. I asked for the copyright.</p> <p>19 They gave it to me. I then took that material and</p> <p>20 revised it to then Lawrence Erl Baum Associates. The</p> <p>21 second one was "Advertising Management in the Book</p> <p>22 Publishing Industry," originally published by NYU</p> <p>23 Press. The third one was "Business Journalism," also</p> <p>24 published by New York University Press.</p> <p>25 Q. For the two that were published by NYU</p>	<p style="text-align: right;">Page 52</p> <p>1 Greco</p> <p>2 Q. Let's start with the last sentence.</p> <p>3 What sales and marketing efforts were made</p> <p>4 for your books?</p> <p>5 A. It depended on the publisher. I have done</p> <p>6 a number of books with university presses. So if I</p> <p>7 go out and give a lecture at an institution, another</p> <p>8 institution aside from Fordham, I might mention that</p> <p>9 material was taken from book X or article Y,</p> <p>10 depending on what was relevant.</p> <p>11 If I do an interview with a reporter, I</p> <p>12 might mention that I am the author of article X or</p> <p>13 book Y, depending on what the article and the</p> <p>14 reporter is interested in.</p> <p>15 When you deal with university presses they</p> <p>16 have for the most part limited resources. And in</p> <p>17 some cases exceptionally limited resources. So an</p> <p>18 author in that case would be expected to try to</p> <p>19 publicize the book as best as he or she can. Often</p> <p>20 at academic conferences or whatever the event would</p> <p>21 be.</p> <p>22 If you deal with what is called a</p> <p>23 commercial scholarly publisher, for example Taylor &amp;</p> <p>24 Francis, Erl Baum, they have never paid for any of</p> <p>25 those marketing efforts on my part. Even though they</p>
<p style="text-align: right;">Page 51</p> <p>1 Greco</p> <p>2 Press that were reverted to you, have you placed</p> <p>3 those books into Google Books?</p> <p>4 A. No.</p> <p>5 Q. Or into the partner program?</p> <p>6 A. No.</p> <p>7 Q. Has anyone from Google ever asked you to</p> <p>8 do that?</p> <p>9 A. I'm not aware of any correspondence.</p> <p>10 Q. Would you like for those books to be in</p> <p>11 Google Books?</p> <p>12 A. It wouldn't hurt. But they were done a</p> <p>13 few years ago. I would probably want to update them.</p> <p>14 Q. Paragraph 11 of your report that starts at</p> <p>15 the bottom of page 4.</p> <p>16 A. I see it.</p> <p>17 Q. You say "As part of my scholarly study of</p> <p>18 the book publishing industry, I have discussed sales</p> <p>19 and marketing practices with over 50 academic</p> <p>20 publishers and with large commercial publishers such</p> <p>21 as Random House, Penguin, HarperCollins, Simon &amp;</p> <p>22 Schuster, Hachette, and Macmillan. I am of course</p> <p>23 familiar with the sales and marketing efforts for my</p> <p>24 books."</p> <p>25 A. That's what is stated in item 11.</p>	<p style="text-align: right;">Page 53</p> <p>1 Greco</p> <p>2 may have more resources, it's just the nature of the</p> <p>3 business. So that's what I have tried to do.</p> <p>4 One other thing you can do is if you write</p> <p>5 a book, let's say, in 2007, and you then write an</p> <p>6 article in 2009 or 2010, you may cite it. That</p> <p>7 citation could pop up somewhere in another book,</p> <p>8 another article, et cetera.</p> <p>9 There are various things you might do, and</p> <p>10 these are the various things that I have done. I</p> <p>11 have not published with -- I don't do trade books, so</p> <p>12 I have not published with any of those what are</p> <p>13 called the big six, the trade publishers in the</p> <p>14 United States.</p> <p>15 Q. You say you have discussed with them,</p> <p>16 though, marketing?</p> <p>17 A. Yes.</p> <p>18 Q. Who specifically at Random House have you</p> <p>19 talked about this issue with?</p> <p>20 A. Over the years I have talked to Alberto</p> <p>21 Vitale, Jack Hoeft. I have talked to the director of</p> <p>22 research there. The name is Dave. I have to get</p> <p>23 back to you about his last name. I have talked to --</p> <p>24 I have had two sons that worked at Random House.</p> <p>25 Three, I am sorry. Three that have worked at Random</p>

14 (Pages 50 - 53)

<p style="text-align: right;">Page 54</p> <p>1 Greco</p> <p>2 House. One son is currently at Penguin. We had</p> <p>3 discussions about this business. I have had lunch</p> <p>4 with Peter Mayer when he ran Penguin. I have had</p> <p>5 lunch with Michael Pietsch who runs Little Brown. If</p> <p>6 you go to the Book Expo America, you run into these</p> <p>7 people. I had another son that worked at Simon &amp;</p> <p>8 Schuster. I have had students who were working at</p> <p>9 those houses or may have been placed as interns or</p> <p>10 employees at those big six houses. Over a period of</p> <p>11 time you meet a lot of people at these places.</p> <p>12 Q. Have you discussed Google's library</p> <p>13 project with any of those people?</p> <p>14 A. Only when it came up with my sons because</p> <p>15 it was public information in Publishers Weekly. I</p> <p>16 don't believe I discussed Google with what you would</p> <p>17 call a major executive at any of the big six. I may</p> <p>18 have discussed it with some of the academic</p> <p>19 university press publishers but just in passing.</p> <p>20 People in this business meet and talk.</p> <p>21 Q. Are you aware that Simon &amp; Schuster was a</p> <p>22 plaintiff or is a plaintiff in the case against</p> <p>23 Google for their scanning of books without permission</p> <p>24 for use in Google Books?</p> <p>25 MR. McGOWAN: Objection, lacks foundation.</p>	<p style="text-align: right;">Page 56</p> <p>1 Greco</p> <p>2 Q. Where did you get that understanding?</p> <p>3 MR. McGOWAN: Objection, asked and</p> <p>4 answered. You may answer.</p> <p>5 A. It was covered in Publishers Weekly. I</p> <p>6 would have to assume it was covered in the New York</p> <p>7 Times and the Wall Street Journal. It was common</p> <p>8 knowledge I think in the book publishing industry in</p> <p>9 New York City.</p> <p>10 Q. Let's go back in time.</p> <p>11 At the time that you believed that the</p> <p>12 publishers were suing, which publishers did you</p> <p>13 understand to be suing Google?</p> <p>14 A. I never read any legal documents. I</p> <p>15 relied entirely on newspaper and magazine articles,</p> <p>16 so I couldn't say definitively which one or which</p> <p>17 ones of the big six were involved in any litigation.</p> <p>18 Q. Were you aware that the AAP sued Google?</p> <p>19 A. Off the top of my head, I don't remember</p> <p>20 that, but I am sure it was covered in Publishers</p> <p>21 Weekly.</p> <p>22 MR. McGOWAN: Again, you should offer your</p> <p>23 best recollection if you have it. You should</p> <p>24 not speculate.</p> <p>25 THE WITNESS: I don't remember.</p>
<p style="text-align: right;">Page 55</p> <p>1 Greco</p> <p>2 You may answer.</p> <p>3 A. I am not aware of any publishing company</p> <p>4 that is currently suing Google over the matter</p> <p>5 related in Civil Action 05 CV 8136 (DC).</p> <p>6 Q. Are you aware of any publisher that was</p> <p>7 ever suing Google over that?</p> <p>8 A. I am aware that certain publishers were at</p> <p>9 one point, but not at the current time.</p> <p>10 Q. Why do you say that they are not currently</p> <p>11 suing?</p> <p>12 A. The matter before me is the Authors Guild,</p> <p>13 Incorporated versus Google. I have never seen any</p> <p>14 document indicating that in this civil action that a</p> <p>15 publisher is suing Google.</p> <p>16 Q. Well, I didn't ask you about this</p> <p>17 particular civil action. The question was whether</p> <p>18 you were aware that publishers were suing Google for</p> <p>19 the same practices that are at issue in this</p> <p>20 particular matter.</p> <p>21 MR. McGOWAN: That question has been asked</p> <p>22 and answered.</p> <p>23 A. It's my understanding that at some point</p> <p>24 in the past they were involved but not at the current</p> <p>25 time.</p>	<p style="text-align: right;">Page 57</p> <p>1 Greco</p> <p>2 Q. Do you have any information about the</p> <p>3 nature of the claims made by the publishers against</p> <p>4 Google?</p> <p>5 A. No.</p> <p>6 Q. Or any understanding of what claims were</p> <p>7 made?</p> <p>8 A. No. I haven't read anything lately. So</p> <p>9 it was at some point in the past.</p> <p>10 Q. Would it surprise you if I told you that</p> <p>11 the publishers claimed that Google was violating the</p> <p>12 Copyright Act by scanning books in libraries without</p> <p>13 permission?</p> <p>14 MR. McGOWAN: Objection. Lacks</p> <p>15 foundation, relevance with respect to surprise.</p> <p>16 He may answer.</p> <p>17 A. If you are telling me that information, I</p> <p>18 would have to assume you are telling me the truth. I</p> <p>19 can't verify any of the issues that you are raising.</p> <p>20 I just don't have that information. I never really</p> <p>21 followed the case close enough to be able to respond</p> <p>22 yes or no to your statement.</p> <p>23 Q. Based on your understanding of the</p> <p>24 publishing industry, you wouldn't be at all surprised</p> <p>25 for publishers to sue Google for copying their books</p>

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<p style="text-align: right;">Page 58</p> <p>1 Greco</p> <p>2 without permission, would you?</p> <p>3 MR. McGOWAN: Same objection. It calls</p> <p>4 for speculation. You may answer.</p> <p>5 A. If I went back and read the earlier</p> <p>6 articles, I would be in a position to answer that</p> <p>7 question definitively. At this point I just don't</p> <p>8 have the information.</p> <p>9 Q. Directing you to paragraph 14 of your</p> <p>10 report.</p> <p>11 A. Yes, I see it.</p> <p>12 Q. The first sentence says "To get the</p> <p>13 attention of consumers in this environment,</p> <p>14 publishers often use some of a book's content to</p> <p>15 promote the book and they do not pay royalties for</p> <p>16 such uses."</p> <p>17 A. I see that.</p> <p>18 Q. That's been a fact for many years, hasn't</p> <p>19 it?</p> <p>20 A. It's a fact that goes back decades.</p> <p>21 Q. That publishers don't pay royalties to</p> <p>22 authors for promotion?</p> <p>23 A. That's my understanding.</p> <p>24 Q. Can you tell me any promotional uses of</p> <p>25 books in the publishing industry that you are</p>	<p style="text-align: right;">Page 60</p> <p>1 Greco</p> <p>2 Publishing Industry" in which you have a copyright</p> <p>3 interest, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And in which your publisher has a</p> <p>6 copyright interest, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And in which I have no copyright interest?</p> <p>9 A. You mean you personally?</p> <p>10 Q. I have no copyright interest, right?</p> <p>11 A. I'm not aware that you have any copyright</p> <p>12 interest.</p> <p>13 Q. Can I promote that book?</p> <p>14 MR. McGOWAN: Objection, vague.</p> <p>15 A. Sure.</p> <p>16 Q. Without your permission?</p> <p>17 A. Sure.</p> <p>18 Q. I could put the entire book on my website?</p> <p>19 MR. McGOWAN: Objection. Vague,</p> <p>20 argumentative. You may answer.</p> <p>21 MS. ZACK: I am asking a question.</p> <p>22 MR. McGOWAN: Now you are distorting</p> <p>23 language.</p> <p>24 A. If you wrote a letter to a friend, if you</p> <p>25 had a website and you indicated that you read my book</p>
<p style="text-align: right;">Page 59</p> <p>1 Greco</p> <p>2 familiar with that are done without the permission of</p> <p>3 the rights holders?</p> <p>4 MR. McGOWAN: Objection, vague. You may</p> <p>5 answer.</p> <p>6 A. Without the permission of the rights</p> <p>7 holder?</p> <p>8 Q. Yes.</p> <p>9 A. Most of the research I have done has</p> <p>10 centered on sales and marketing by publishers.</p> <p>11 Q. Who were rights holders?</p> <p>12 A. Not every author conveys the copyright to</p> <p>13 the publisher. Some authors hold the copyright.</p> <p>14 Q. Did you have an understanding that the</p> <p>15 publishers had an agreement with the authors in the</p> <p>16 cases where they were promoting the book?</p> <p>17 A. It's my understanding if you convey the</p> <p>18 copyright to the publisher, the publisher handles all</p> <p>19 sales and marketing operations. So if the publisher</p> <p>20 then decided to send out a galley print and/or</p> <p>21 digital galley or post things in a company magazine</p> <p>22 or website, they just do it. Except for the star</p> <p>23 authors, the publisher really controls that</p> <p>24 exclusively.</p> <p>25 Q. Let's talk about your book. "The</p>	<p style="text-align: right;">Page 61</p> <p>1 Greco</p> <p>2 and liked the book and encouraged your friends to</p> <p>3 read it, I wouldn't necessarily know you did that.</p> <p>4 Q. Well, let's say I posted the text, the</p> <p>5 actual text of your book on my website and said "I</p> <p>6 love this book," is that okay with you?</p> <p>7 MR. McGOWAN: Objection, vague. You may</p> <p>8 answer.</p> <p>9 A. I would refer that to my editor.</p> <p>10 Q. Has anyone ever done that to any of your</p> <p>11 books?</p> <p>12 MR. McGOWAN: Objection, vague. You may</p> <p>13 answer.</p> <p>14 A. I don't know.</p> <p>15 Q. Do you know how Google makes money?</p> <p>16 MR. McGOWAN: Objection, foundation. You</p> <p>17 can answer.</p> <p>18 A. It's my understanding that they make money</p> <p>19 from a variety of business operations including</p> <p>20 advertising.</p> <p>21 Q. What are the other operations that you are</p> <p>22 aware of that are moneymaking for Google?</p> <p>23 MR. McGOWAN: Same objection.</p> <p>24 A. I have never gone through their quarterly</p> <p>25 reports, their annual reports, conference call</p>



<p style="text-align: right;">Page 62</p> <p>1 Greco</p> <p>2 transcripts, so I really couldn't say.</p> <p>3 Q. Do you consider Google a commercial</p> <p>4 operation?</p> <p>5 MR. McGOWAN: Objection, vague. It calls</p> <p>6 for a legal conclusion. You may answer.</p> <p>7 A. I believe it's a business incorporated in</p> <p>8 the United States.</p> <p>9 Q. Are you familiar with the Copyright</p> <p>10 Clearance Center?</p> <p>11 A. I have read about the Copyright Clearance</p> <p>12 Center.</p> <p>13 Q. What do you know about it?</p> <p>14 A. I believe it's an organization. I believe</p> <p>15 it's based in New England, and that they clear</p> <p>16 copyrights for various publications.</p> <p>17 Q. Are you aware of any licensing offered by</p> <p>18 them on behalf of authors and publishers?</p> <p>19 A. I have never looked into that matter.</p> <p>20 Q. So you don't know whether or not the CCC</p> <p>21 offers collective licenses?</p> <p>22 MR. McGOWAN: Objection, vague, to the</p> <p>23 extent it calls for a legal conclusion, but you</p> <p>24 may answer.</p> <p>25 A. I never looked into it, so I really</p>	<p style="text-align: right;">Page 64</p> <p>1 Greco</p> <p>2 issue of possible licenses for digital copying of</p> <p>3 books?</p> <p>4 MR. McGOWAN: Objection, vague. You may</p> <p>5 answer.</p> <p>6 A. I don't believe so.</p> <p>7 Q. Have you ever done any research on the</p> <p>8 book purchasing practices of libraries?</p> <p>9 A. I am familiar with those practices.</p> <p>10 Q. Are you aware that libraries are currently</p> <p>11 buying both print books and eBooks?</p> <p>12 MR. McGOWAN: Objection. Lacks</p> <p>13 foundation, vague and compound. You may answer.</p> <p>14 A. Yes.</p> <p>15 Q. Are you aware that libraries, including</p> <p>16 university libraries, purchase licenses for scholarly</p> <p>17 works?</p> <p>18 MR. McGOWAN: Objection, vague. You may</p> <p>19 answer.</p> <p>20 A. Yes.</p> <p>21 Q. Do you know if any of your works are</p> <p>22 included in any such license?</p> <p>23 A. Yes.</p> <p>24 Q. Which works?</p> <p>25 A. Bear with me for a second.</p>
<p style="text-align: right;">Page 63</p> <p>1 Greco</p> <p>2 couldn't say yes or no.</p> <p>3 Q. Are you familiar with ASCAP or BMI?</p> <p>4 A. Yes, I am familiar with those two</p> <p>5 entities.</p> <p>6 Q. Has any of your research been in the music</p> <p>7 industry?</p> <p>8 A. I once coauthored a chapter on the radio</p> <p>9 industry a number of years ago, so it's likely I may</p> <p>10 have referred to them.</p> <p>11 Q. Are you aware of any licenses offered by</p> <p>12 the ASCAP or BMI?</p> <p>13 MR. McGOWAN: Objection, vague. You may</p> <p>14 answer.</p> <p>15 A. Only in very general terms.</p> <p>16 Q. What general terms are you aware of?</p> <p>17 A. Well, ASCAP and BMI represent, as I</p> <p>18 understand it, individuals that write music and</p> <p>19 lyrics and music publishers, and that they work with</p> <p>20 an organization called Harry Fox to collect fees</p> <p>21 whenever a song is played or in the case of</p> <p>22 synchronization fees when a song is used in a motion</p> <p>23 picture, television, commercial, et cetera. That's</p> <p>24 my understanding of those organizations.</p> <p>25 Q. Have you ever done any research on the</p>	<p style="text-align: right;">Page 65</p> <p>1 Greco</p> <p>2 (Witness reviewed document.)</p> <p>3 A. I believe that the journal articles</p> <p>4 published by the Journal of Scholarly Publishing; the</p> <p>5 journal articles published by -- the journal article</p> <p>6 published by Learned Publishing; I believe the</p> <p>7 article published in the Journal of Cultural</p> <p>8 Economics; I believe the article published in the</p> <p>9 Journal of Media Management; I believe the articles</p> <p>10 published in Publishing Research Quarterly or Book</p> <p>11 Publishing Quarterly are available on various online</p> <p>12 sites.</p> <p>13 Q. Available as part of a subscription?</p> <p>14 MR. McGOWAN: Objection, compound. You</p> <p>15 may answer.</p> <p>16 A. I don't know what the terms and conditions</p> <p>17 are.</p> <p>18 Q. Do you not get any royalties for that?</p> <p>19 A. I have never received a royalty for an</p> <p>20 article.</p> <p>21 Q. Do you have a right to receive royalties</p> <p>22 for articles?</p> <p>23 MR. McGOWAN: Objection to the extent it</p> <p>24 calls for a legal conclusion. You may answer.</p> <p>25 A. Perhaps if it's reprinted in an anthology,</p>

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<p style="text-align: right;">Page 66</p> <p>1 Greco</p> <p>2 but that would be the only case, and I have never</p> <p>3 received a payment based on an article in an</p> <p>4 anthology.</p> <p>5 Q. So you have seen these general articles</p> <p>6 that you have mentioned in an online subscription, is</p> <p>7 that what you are telling me?</p> <p>8 A. I have seen them in online services.</p> <p>9 Q. But you are not aware of how they got</p> <p>10 there?</p> <p>11 A. I listed many different publishing --</p> <p>12 journal publishing operations, so I'm not aware of</p> <p>13 those terms and conditions. But I have seen them on</p> <p>14 Project Muse and elsewhere.</p> <p>15 Q. Project Muse, and where else can you tell</p> <p>16 me?</p> <p>17 A. It's possible that it's been on Proquest.</p> <p>18 It's possible it's on the Springer website. They</p> <p>19 bought Publishing Research Quarterly and Book</p> <p>20 Research Quarterly from Irving Horowitz. There could</p> <p>21 be others.</p> <p>22 Q. Referring you to your c.v. on page 25 of</p> <p>23 PX 92.</p> <p>24 A. Yes, I see page 25.</p> <p>25 Q. There is a heading "Papers Delivered</p>	<p style="text-align: right;">Page 68</p> <p>1 Greco</p> <p>2 Department of Labor, industry statistical data from</p> <p>3 other reliable sources regarding the sale of books in</p> <p>4 various retail channels. The sale of eReaders,</p> <p>5 various types, et cetera.</p> <p>6 Q. Is it your understanding that Google Books</p> <p>7 includes both partner program books and library</p> <p>8 project books?</p> <p>9 A. I have looked at it as two separate</p> <p>10 operations. The partnership program of 45,000 or so</p> <p>11 publishers, and the library. I have never commingled</p> <p>12 the two, although at times I may commingle them in a</p> <p>13 presentation but they are really two very separate --</p> <p>14 as far as I know, two separate operations.</p> <p>15 Q. They are both Google Books, though, right?</p> <p>16 A. Right, but they have different parameters.</p> <p>17 Q. But in your report when you refer to</p> <p>18 "Google Books," you are referring to both, right?</p> <p>19 MR. McGOWAN: Objection, vague. You may</p> <p>20 answer.</p> <p>21 Q. You say "I understand that Google has</p> <p>22 scanned more than 20 million books in connection with</p> <p>23 the Google Books project."</p> <p>24 A. That's correct.</p> <p>25 Q. When you refer to "Google Books," you are</p>
<p style="text-align: right;">Page 67</p> <p>1 Greco</p> <p>2 Before Scholarly and Professional Associations."</p> <p>3 Then there's a entry for September 16, 2011, at The</p> <p>4 Library of Congress. It says "Books in Our Digital</p> <p>5 Future."</p> <p>6 Is that your presentation, "Books in Our</p> <p>7 Digital Future"?</p> <p>8 A. Yes.</p> <p>9 Q. Is that available online?</p> <p>10 A. I don't know. It's possible the Library</p> <p>11 of Congress has posted it. I don't know.</p> <p>12 Q. What did you say generally; what was your</p> <p>13 thesis?</p> <p>14 A. I dealt with the growth in print books and</p> <p>15 digital books over a period of time, and gave some</p> <p>16 historical overview and some outlook on what was</p> <p>17 happening in the digital book sectors in all of the</p> <p>18 book categories; adult, juvenile, mass market, et</p> <p>19 cetera.</p> <p>20 Q. And that was based on what type of</p> <p>21 statistic?</p> <p>22 A. Some of the statistical data came from the</p> <p>23 U.S. Department of Commerce, Bureau of the Census.</p> <p>24 Some of the statistical data came from other federal</p> <p>25 agencies. U.S. Department of Education, the U.S.</p>	<p style="text-align: right;">Page 69</p> <p>1 Greco</p> <p>2 referring to both partner program and the library</p> <p>3 project, correct?</p> <p>4 A. In that sentence, yes.</p> <p>5 Q. Is there any sentence in which that's not</p> <p>6 the case?</p> <p>7 A. Well, on page 2, item number 5, I refer</p> <p>8 specifically to the partner program.</p> <p>9 Q. Right, I understand. But I am saying when</p> <p>10 you use the term "Google Books," you are referring</p> <p>11 both to the partner program and the library project,</p> <p>12 correct?</p> <p>13 A. Yes. And I probably should have separated</p> <p>14 the two in a more precise manner.</p> <p>15 MS. ZACK: I don't have any more</p> <p>16 questions.</p> <p>17 MR. McGOWAN: I have two because I want to</p> <p>18 make sure the record is clear on what Ms. Zack</p> <p>19 was just alluding to.</p> <p>20 EXAMINATION BY</p> <p>21 MR. McGOWAN:</p> <p>22 Q. Dr. Greco, you just said that you</p> <p>23 understand the partner program and the library</p> <p>24 project have different parameters, is that correct?</p> <p>25 A. Yes.</p>



<p style="text-align: right;">Page 70</p> <p>1 Greco</p> <p>2 MS. ZACK: I object to the form.</p> <p>3 Q. In the library program, do you understand</p> <p>4 that Google copies books that are provided by</p> <p>5 libraries?</p> <p>6 A. Yes.</p> <p>7 Q. With respect to that program, do you</p> <p>8 understand that Google does not contact all, at</p> <p>9 least, of the rights holders in connection with that</p> <p>10 program?</p> <p>11 A. That's my understanding.</p> <p>12 Q. Did you understand that when you wrote</p> <p>13 your report?</p> <p>14 A. Yes.</p> <p>15 Q. You testified as to steps that you</p> <p>16 personally have taken to publicize your books.</p> <p>17 In addition to steps that you have taken,</p> <p>18 did your publishers do things such as distribute</p> <p>19 copies to get reviews, that sort of thing?</p> <p>20 A. That's my understanding.</p> <p>21 Q. In paragraph 14 on page 5, you refer to</p> <p>22 publishers using some of a book's content to promote</p> <p>23 the book, do you see that?</p> <p>24 A. Paragraph 14, yes, "to promote the book,"</p> <p>25 yes, the first sentence.</p>	<p style="text-align: right;">Page 72</p> <p>1 Greco</p> <p>2 with Mr. McGowan during the break?</p> <p>3 MR. McGOWAN: Objection, asked and</p> <p>4 answered. You may answer.</p> <p>5 A. We did discuss the library portion and the</p> <p>6 publisher portion. The publisher program portion.</p> <p>7 MS. ZACK: I have no other questions.</p> <p>8 (Time noted 12:40 p.m.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12 _____</p> <p>13 ALBERT N. GRECO</p> <p>14 Subscribed and sworn to before me</p> <p>15 this _____ day of _____, 2012.</p> <p>16</p> <p>17 _____</p> <p>18 NOTARY PUBLIC</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 71</p> <p>1 Greco</p> <p>2 Q. Is it your understanding that it is the</p> <p>3 use of the book's content that is what gets the</p> <p>4 attention of the consumers in this environment, which</p> <p>5 is the beginning of the sentence?</p> <p>6 MS. ZACK: Objection to form.</p> <p>7 A. I believe it's almost always the book</p> <p>8 content.</p> <p>9 MR. McGOWAN: I have nothing further.</p> <p>10 (CONTINUED) EXAMINATION</p> <p>11 BY MS. ZACK:</p> <p>12 Q. Are you aware of any books shown in Google</p> <p>13 Books without permission of authors or publishers?</p> <p>14 MR. McGOWAN: Objection, vague. You may</p> <p>15 answer.</p> <p>16 A. I believe the library portion.</p> <p>17 Q. You believe what?</p> <p>18 A. I believe the books that were scanned in</p> <p>19 the library portion of Google Books may or may not</p> <p>20 have been done with prior permission.</p> <p>21 Q. Did you discuss that topic with</p> <p>22 Mr. McGowan during the break?</p> <p>23 A. It may have come up just in passing.</p> <p>24 Q. We have only been here a short time.</p> <p>25 Did you or did you not discuss that topic</p>	<p style="text-align: right;">Page 73</p> <p>1</p> <p>2 C E R T I F I C A T E</p> <p>3</p> <p>4 STATE OF NEW YORK )</p> <p>5 ) s.s.:</p> <p>6 COUNTY OF NEW YORK )</p> <p>7</p> <p>8 I, LINDA DEVECKA, a Notary Public</p> <p>9 within and for the State of New York, do</p> <p>10 hereby certify:</p> <p>11 That ALBERT N. GRECO, the witness whose</p> <p>12 deposition is hereinbefore set forth, was duly</p> <p>13 sworn by me and that such deposition is a true</p> <p>14 record of the testimony given by such witness.</p> <p>15 I further certify that I am not related to</p> <p>16 any of the parties to this action by blood or</p> <p>17 marriage; and that I am in no way interested in</p> <p>18 the outcome of this matter.</p> <p>19 IN WITNESS WHEREOF, I have hereunto set my</p> <p>20 hand this 12th day of June, 2012.</p> <p>21</p> <p>22</p> <p>23 _____</p> <p>24 LINDA DEVECKA</p> <p>25</p>

19 (Pages 70 - 73)

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Page 74

1	
2	----- I N D E X -----
3	WITNESS            EXAMINATION BY            PAGE
4	ALBERT N. GRECO    MS. ZACK            4
5	MR. McGOWAN            69
6	MS. ZACK            71
7	
8	----- EXHIBITS -----
9	PLAINTIFF'S            DESCRIPTION            FOR ID
10	Exhibit 92, document titled "Expert    4
11	Report of Professor Albert N. Greco May
12	3, 2012"
13	
14	The reporter retained the exhibit to annex to the
15	transcript.
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Page 75

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6 CASE: THE AUTHORS GUILD, INC. v GOOGLE INC.  
7 DEPOSITION DATE: JUNE 6, 2012  
8 DEPONENT: ALBERT N. GRECO  
9 PAGE LINE(S)    CHANGE            REASON  
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24 THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.  
25 \_\_\_\_\_  
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20 (Pages 74 - 75)

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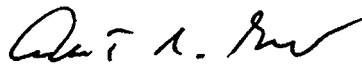
with Mr. McGowan during the break?

MR. MCGOWAN: Objection, asked and  
answered. You may answer.

A. We did discuss the library portion and the  
publisher portion. The publisher program portion.

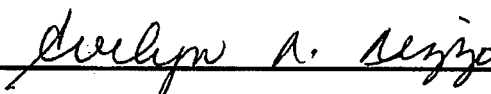
MS. ZACK: I have no other questions.

(Time noted 12:40 p.m.)

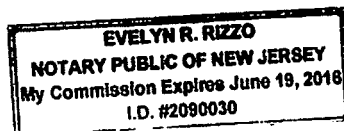


ALBERT N. GRECO

Subscribed and sworn to before me  
this 10<sup>th</sup> day of JULY, 2012.



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27

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stand and signed the same

the same. (Exhibit 10)

there was no other

and the same was signed by the

the same. (Exhibit 11)

the same. (Exhibit 12)

(Exhibit 13)

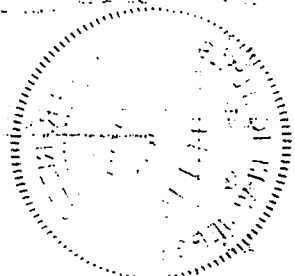
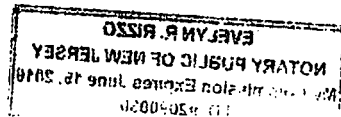
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JOHN A. BARRON

on behalf of the same

the same. (Exhibit 14)

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Page 75

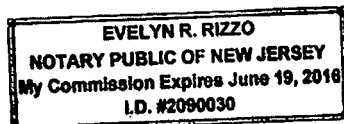
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PAGE	LINE(S)	CHANGE	REASON
17	4	ARTHUR	SPELLING ERROR
40	20	ERLBAUM	ONE WORD
40	21	INFORMA	SPELLING ERROR
40	22	TAYLOR & FRANCIS	DELETE COMMA; ADD &
40	24	TAYLOR & FRANCIS	DELETE COMMA; ADD &
46	4	ITALICS: PUB. WEEKLY	ADD ITALICS
46	6+7	ITALICS: NEW YORK TIMES	"
46	7+8	ITALICS: WALL ST. JOURNAL	"
46	9	ITALICS: PUB. WEEKLY	"
50	20	ERLBAUM	ONE WORD
52	24	ERLBAUM	ONE WORD
53	22+23	DAVE THOMPSON	ADDED LAST NAME
54	15	ITALICS: PUB. WEEKLY	ADD ITALICS



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10-10-68

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Approved for release by NSA on 08-28-2014 pursuant to E.O. 13526

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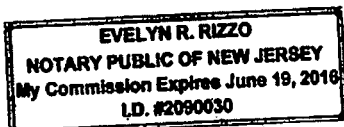
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56	6	ITALICS: NEW YORK	"
56	7	ITALICS: TIMES	"
56	7	ITALICS: WALL ST. JOURNAL	"
65	4	ITALICS: J. OF SCH. PUB.	"
65	6	ITALICS: LEARNER PUB.	"
65	7	ITALICS: J. OF CURRICULUM	"
65	9	ITALICS: J. OF MEDIA MGT.	"
66	19	ITALICS: PUB. R. QUART.	"
66	19 & 20	ITALICS: BOOK	"
66	20 & 21	ITALICS: RES. QUART.	"



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